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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.,
Petitioners,

VS.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Petition for Certiorari Filed April 30, 1968
Certiorari Granted June 10, 1968

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CHRONOLOGICAL LIST OF IMPORTANT DATES

1. May 26, 1966—Petition of Respondent Mary Elizabeth Blue Hull Memorial Presbyterian Church (hereinafter referred to as "Hull Memorial") filed in the Superior Court of Chatham County, Georgia.
2. May 27, 1966—Petition of Respondent Eastern Heights Presbyterian Church (hereinafter referred to as "Eastern Heights") filed in the Superior Court of Chatham County, Georgia.
3. June 23, 1966—Petitioners' Answer and Crossbill filed in said court in response to Hull Memorial's Petition.
4. June 23, 1966—Petitioners' Answer and Crossbill filed in said court in response to Eastern Heights' Petition.
5. July 8, 1966—Hull Memorial's Answer filed in said court in response to Petitioners' Answer and Crossbill.
6. July 8, 1966—Eastern Heights' Answer filed in said court in response to Petitioners' Answer and Crossbill.
7. November 7, 1966—Eastern Heights' Amendment filed in said court amending its Petition.
8. November 22, 1966—Hull Memorial's Amendments filed in said court amending its Petition.
9. November 28, 1966—Petitioners' Amendment filed in said court amending its Crossbill filed in response to Hull Memorial's Petition.
10. November 28, 1966—Petitioners' Amendment filed in said court amending its Crossbill filed in response to Eastern Heights' Petition.
11. December 6, 1966—Eastern Heights' Amendment filed in said court amending its Petition.
12. December 13, 1966—Hull Memorial's Amendment filed in said court amending its amended Petition.

13. December 12, 1966 through December 15, 1966—Trial of both cases in the Superior Court of Chatham County, Georgia, tried jointly by agreement of parties.

14. December 15, 1966—Verdict of the jury in favor of Respondents Hull Memorial and Eastern Heights.

15. December 22, 1966—Judgment of the Superior Court of Chatham County, Georgia, entered in favor of Hull Memorial.

16. December 22, 1966—Judgment of the Superior Court of Chatham County, Georgia, entered in favor of Eastern Heights.

17. December 29, 1966—Notice of Joint Appeal filed by Petitioners.

18. November 13, 1967—Oral arguments before the Supreme Court of Georgia by Petitioners and Respondents.

19. January 18, 1968—Opinion of the Supreme Court of Georgia affirming the judgments of the Superior Court of Chatham County, Georgia, in favor of Respondents.

20. January 18, 1968—Judgment of the Supreme Court of Georgia affirming the judgment of the Superior Court of Chatham County, Georgia, in favor of Hull Memorial.

21. January 18, 1968—Judgment of the Supreme Court of Georgia affirming the judgment of the Superior Court of Chatham County, Georgia, in favor of Eastern Heights.

22. January 29, 1968—Petitioners' Motion for Rehearing filed in the Supreme Court of Georgia.

23. February 12, 1968—Opinion of the Supreme Court of Georgia denying Petitioners' Motion for Rehearing.

24. February 12, 1968—Judgment of the Supreme Court of Georgia denying Petitioners' Motion for Rehearing.

25. April 30, 1968—Petition for Writ of Certiorari to the Supreme Court of Georgia filed by Petitioners in this Court.

26. June 10, 1968—Order of this Court granting Petitioners' Petition for Writ of Certiorari.

PLEADINGS

[55][1] STATE OF GEORGIA)
COUNTY OF CHATHAM)

TO THE SUPERIOR COURT OF SAID COUNTY

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS.
PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

The petition of MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, as Plaintiff, respectfully shows to the Court the following:

1. That Plaintiff is a non-profit corporation duly organized under the laws of the State of Georgia, having its principal office in Savannah, Chatham County, Georgia.

2. That the defendants, PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, CHAIRMAN, of the ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH, are within the jurisdiction of this Honorable Court.

3. That Plaintiff corporation owns, has title and is in possession of that certain real property described as follows:

> All that certain lot, tract or parcel of land lying and being at the Northeastern corner of Bull and 37th Streets, in Savannah, Chatham County, Georgia, and distinguished upon the map or plan of said City as Lots Numbered Fifty-three (53) and Fifty-four (54) of

1. Numbers in brackets refer to pages of certified transcript of record filed with this Court.

Thomas Ward. Said lots lying and being contiguous and comprising the Northeastern corner of said Bull and 37th Streets, together with all and singular the buildings, improvements, church edifices, and Sanctuary at which location Divine services of Worship are held.

[56] 4. Not withstanding the fact that the Plaintiff is the owner of and in peaceful possession of the property described in Paragraph 3 hereof, the Defendants have officially notified Plaintiff that it is their intention to trespass upon said property, to deny the Plaintiff the right to hold religious services in its own property and to provide services of worship in said property itself, and to exclude petitioner and its duly constituted Pastor and Elders and officers of Plaintiff corporation from the use of its own property. This action if carried out as threatened constitutes a trespass and eviction of the owners and possessors of said property. It is necessary for Defendants to be enjoined from trespassing and evicting petitioner in order to avoid a circuity and multiplicity of actions, all of the aforesaid threats to trespass upon and to oust petitioner from said premises being continuous in their nature.

5. Plaintiff will be irreparably damaged, harmed, and injured and the peace and dignity of their right to religious worship will be impaired.

WHEREFORE YOUR PLAINTIFF PRAYS as follows, to-wit:

A. That process issue requiring the Defendants to be and appear in said Court to answer this complaint.

B. That, until further order of Court, the Defendants be restrained and temporarily enjoined from committing the aforesaid acts of trespass and eviction.

[57] C. That a day certain be fixed upon which the Defendants are required to show cause, if any they have, why they should not be temporarily enjoined from committing the acts of trespass and eviction hereinabove alleged.

D. That a copy of this petition and order issued thereon be served on the Defendants in person or their agents.

E. That the plaintiff have such other and further relief as to the Court may seem reasonable and just.

F. That upon the final hearing of the case, the Defendants be permanently enjoined from committing the acts of damage and trespass hereinabove complained of.

/s/ Richard T. Cowan,
Attorney for Plaintiff.

[Verification, Order of court and Summons omitted in printing.]

[7] STATE OF GEORGIA)
COUNTY OF CHATHAM)

TO THE SUPERIOR COURT OF SAID COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

The petition of EASTERN HEIGHTS PRESBYTERIAN CHURCH, hereinafter referred to as plaintiff, respectfully shows:

1. The plaintiff is a non-profit religious institution incorporated and organized under the laws of the State of Georgia, with its principal office at 1307 East 37th Street, Savannah, Chatham County, Georgia.

2. The defendants, Presbyterian Church in the United States and J. Lehmon Brantley, are subject to the jurisdiction of this Court. The defendant, J. Lehmon Brantley, as Chairman of the Administrative Commission of the Presbytery of Savannah, is an authorized officer and agent of the Presbytery of Savannah and the Presbyterian Church in the United States. Said defendant was so designated and commissioned at the meeting of the Presbytery of Savannah on April 19, 1966 in Brunswick, Georgia.

3. The plaintiff is vested with title and ownership, and is now enjoying the quiet and peaceful possession of the hereinafter described property:

> All those certain lots, tracts or parcels of land situate, lying and being in the City of Savannah, Chatham County, State of Georgia, designated upon a plan of subdivision known as Myers Park Place, now Oliver Ward, as Lots Numbers One (1), Two (2), Three (3),

Four (4), Five (5), [8] Six (6), and Seven (7), in Block Seventeen (17), of the said Myers Park Place, together with all the improvements on said lots. The said seven lots hereby conveyed are bounded as a whole as follows: On the North by 37th Street, on the East by property now or formerly owned by Kehoe, on the South by a lane, and on the West by Cedar Street. Each of said lots hereby conveyed has a width of 30 feet and a depth of 30 feet, and the said seven lots are a part of the property conveyed to George H. Richter and Elry Stone by the Myers Park Place Corporation by deed bearing date the 29th day of November, 1923, recorded in the Clerk's office, Superior Court, Chatham County, Georgia, in Book 18 V's, folio 163, and are the same lots conveyed by said George H. Richter and Elry Stone to said The Trustees of the Independent Presbyterian Church of Savannah by deed dated May 9, 1924, and recorded in said Clerk's office in Book 19 G's, page 206.

All those certain lots, tracts or parcels of land situate lying and being in the City of Savannah, Chatham County, Georgia, and being known and designated on the map of said City as Lots Eight (8) and Nine (9), Block Seventeen (17) Oliver Ward. Said lots lying contiguous and having a combined frontage of Sixty (60) feet on the North side of Seiler Avenue with a rectangular depth Northwardly of Eighty (80) feet to a lane and being bounded on the whole as follows: On the North by a lane, on the East by Lot Thirty Six (36), said block and Ward, on the South by Seiler Avenue and on the West by Lot Ten (10), said block and Ward.

4. The defendants by the action of said Administrative Commission of the Presbytery of Savannah, dated May 19, 1966, as shown upon Exhibit "A", hereto attached and made a part hereof, threaten to trespass upon the plaintiff's property by assuming original jurisdiction over said property, denying the church session of the plaintiff the right to exercise authority over the administration of

church affairs and imposing other ministerial leadership upon the plaintiff for the purposes of holding regular services of worship and does threaten other action in accordance with the constitution of the Presbyterian Church in the United States. Such action in assuming original jurisdiction over the plaintiff's property would constitute an act of trespass. The removal of plaintiff's regular pastor, Mr. Todd W. Allen and the imposition of another minister of the defendant's choosing would disrupt the good order and peace of the plaintiff's worship service and the administration of its affairs. The actions [9] provided for in Exhibit "A" constitute continuing, threatened acts of trespass on the property hereinbefore described, which would destroy the plaintiff's quiet and peaceful possession that it now enjoys and have a demoralizing effect upon the orderly administration of the church. The defendants must be enjoined to avoid a circuity and multiplicity of suits. Said threats of trespass and invasion are continuous in their nature.

5. The plaintiff will be irreparably damaged, injured and hurt unless the threatened acts of trespass and invasion are enjoined. Further, the peaceful utility and enjoyment of said property for religious worship and church services will be adversely affected, and the dignity and sanctity of the church edifice intruded upon.

WHEREFORE PLAINTIFF PRAYS as follows, to-wit:

A. That process issue requiring the defendants to be and appear in said court to answer this complaint;

B. That, until further order of court, the defendants be restrained and temporarily enjoined from committing the aforesaid acts of trespass;

Steve Miller who refused to comment to the Commission, affirmed that he voted in favor of the above mentioned resolution from his church, that the resolution definitely expressed his wishes, and that he was unwilling to reconsider his action or to confer with the full Administrative Commission, but stated again that his action was final, and

WHEREAS, Each of the active Ruling Elders serving on the Session of the Eastern Heights Presbyterian Church, by name O. M. Alcorn, Jr., S. D. Gladen, R. A. Warren, Frank L. Perry, Armin S. Hubert, W. Dalton Smith, James G. Luce, Albert Freundt, and J. J. Parrish, was visited Personally or communicated with by telephone by members of this Administrative Commission, with the one exception of Mr. B. C. Kirkpatrick who was not contacted, and each one of them affirmed that he had voted in favor of the above mentioned resolution from his church, that the resolution definitely expressed his wishes, and that he was unwilling to reconsider his action or to confer with the full Administrative Commission, but stated again that his action was final,

THEREFORE, Each active Ruling Elder, by name M. R. Baker, R. W. Cowan, C. P. Ford, L. R. Herman, Steve Miller, W. S. Stegin, and G. C. Smith, serving on the session of the Mary Elizabeth Blue Hull Memorial Presbyterian Church, with the one exception of Mr. R. M. Rehm, having renounced his office in and communion with the Presbyterian Church in the United States; and each active Ruling Elder, by name O. M. Alcorn, Jr., S. D. Gladen, R. A. Warren, Frank L. Perry, Armin S. Hubert, W. Dalton Smith, James G. Luce, Albert Freundt, and J. J. Parrish, serving on the Session of the Eastern Heights Presbyterian Church, with the one exception of Mr. B. C. Kirkpatrick who was not contacted, having renounced his office in and

communion with and the jurisdiction of the Presbyterian Church in the United States,

This Administrative Commission, in the name of and by the authority and power vested in it by the Presbytery of Savannah of the Presbyterian Church in the United States, does hereby record the irregularity of the actions of these Ruling Elders, by name M. R. Baker, R. W. Cowan, C. P. Ford, L. R. Herman, Steve Miller, W. S. Stegin, and G. C. Smith of the Mary Elizabeth Blue Hull Memorial Presbyterian Church, and O. M. Alcorn, Jr., S. D. Gladen, R. A. Warren, Frank L. Perry, Armin S. Hubert, W. Dalton Smith, James G. Luce, Albert Freundt, and J. J. Parrish of the Eastern Heights Presbyterian Church, in renouncing their office in and communion with and the jurisdiction of the Presbyterian Church in the United States, and does hereby with sincere reluctance and grief of spirit declare that they have removed themselves from office and membership in the Presbyterian Church in the United States, and does hereby withdraw from each of them; by name [13] M. R. Baker, R. W. Cowan, C. P. Ford, L. R. Herman, Steve Miller, W. S. Stegin, G. C. Smith, O. M. Alcorn, Jr., S. D. Gladen, R. A. Warren, Frank L. Perry, Armin S. Hubert, W. Dalton Smith, James G. Luce, Albert Freundt, J. J. Parrish, all authority to exercise office derived from the Presbyterian Church in the United States, as expressly required in the Constitution of the Presbyterian Church in the United States, *Book of Church Order,* section 111-3, and further

Since there is only one Ruling Elder in the Eastern Heights Presbyterian Church, namely Mr. B. C. Kirkpatrick, and there is only one Ruling Elder in the Mary Elizabeth Blue Hull Memorial Presbyterian Church, namely Mr. R. M. Rehm, and since according to the provisions of the

Constitution of the Presbyterian Church in the United States, *Book of Church Order*, section 15-2, one Ruling Elder does not constitute a Session, and further

Since there is no Session and no one who can exercise jurisdiction in either the Mary Elizabeth Blue Hull Memorial Presbyterian Church or the Eastern Heights Presbyterian Church,

THEREFORE, This Administrative Commission, in the name of and by the authority and power of the Presbytery of Savannah of the Presbyterian Church in the United States, assumes original jurisdiction over these two aforementioned churches in accordance with the Constitution of the Presbyterian Church in the United States, *Book of Church Order*, section 16-7(2), which states that the Presbytery has the power to assume original jurisdiction in cases in which the Church Session cannot exercise its authority, and further

BE IT KNOWN THAT this Administrative Commission will secure Ministerial leadership and provide regular services of worship in the sanctuaries of the Mary Elizabeth Blue Hull Memorial Presbyterian Church and the Eastern Heights Presbyterian Church for those members who wish to continue their membership in and communion with the Presbyterian Church in the United States, and will take such further action as shall be necessary in accordance with the Constitution of the Presbyterian Church in the United States.

ALL OF THE ABOVE ACTION, after careful and prayerful consideration, was unanimously adopted by the Administrative Commission on May 19, 1966 at its meeting in Savannah, Georgia, and in accordance with the *Book of Church Order*, sections 118-2 and 118-3, copies of this action

are to be forwarded to Clifford H. Brewton, Todd W. Allen, M. R. Baker, R. W. Cowan, C. P. Ford, L. R. Herman, Steve Miller, R. M. Rehm, W. S. Stegin, G. C. Smith, O. M. Alcorn, Jr., S. D. Gladen, R. A. Warren, Frank L. Perry, Armin S. Hubert, W. Dalton Smith, James G. Luce, Albert Freundt, J. J. Parrish, and B. C. Kirkpatrick; and notice is hereby given that this action will be filed with the Stated Clerk of the Presbytery of Savannah on May 24, 1966, and further that copies of this action are to be forwarded to the Stated Clerk of the General Assembly of the Presbyterian Church in the United States and the Executive Secretary of the Board of Annuities and Relief of the Presbyterian Church in the United States.

[14] /s/ J. Lehmon Brantley

Chairman, the Administrative Commission

/s/ Frank Alfred Mathes
/s/ Chalmers F. McCutchen
/s/ William A. Crosland, Jr.
/s/ J. E. Lambright
/s/ William C. Cox

[Affidavit, Order of court and Summons omitted in printing.]

[62] STATE OF GEORGIA :
COUNTY OF CHATHAM :

IN THE SUPERIOR COURT OF SAID COUNTY

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS.
PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5003

Answer and Crossbill

NOW COME Defendants in the above styled action and for answer respectfully show the following:

1. Defendants neither admit nor deny Paragraph One (1) of Plaintiff's Petition for want of sufficient information.

2. Defendants admit Paragraph Two (2) of Plaintiff's Petition.

3. Defendants admit that part of Paragraph Three (3) of Plaintiff's Petition which states that Plaintiff Corporation is holding title to the subject property but deny that any of its officers or persons now holding possession have a right of possession.

4. Defendants deny Paragraph Four (4) of Plaintiff's Petition.

5. Defendants deny Paragraph Five (5) of Plaintiff's Petition.

FOR FURTHER PLEA, ANSWER AND CROSSBILL DEFENDANTS SHOW:

6. That certain members of the congregation of Plaintiff Corporation including all active Ruling Elders except for one, on April 17, 1966, by Resolution, declared themselves to be free from all "ecclesiastical control, jurisdiction and oversight of the Presbyterian Church in the United States" and attempted to establish themselves as an independent Presbyterian Church, a copy of said Resolution being attached hereto, marked Exhibit "A", and made a part hereof.

[63] 6(a). That prior to said action of April 17, 1966, the aforesaid members of said congregation and active Ruling Elders who voted in the affirmative on said Resolution as well as the Plaintiff Corporation were by their former actions and active practice, members of the Presbyterian Church in the United States, (hereinafter called the Southern Presbyterian Church) and by virtue of such membership and association, were individually and collectively subject to the constitution and laws of said Southern Presbyterian Church, said Church being representative in form and not congregational.

7. That a copy of the aforesaid Resolution of April 17, 1966 was received by the Presbytery of Savannah of the Southern Presbyterian Church as well as a letter dated the same date from the pastor of said church, Clifford H. Brewton, who therein renounced the "authority or jurisdiction of the Savannah Presbytery, the Synod of Georgia, and the Presbyterian Church in the United States".

8. Thereafter the Presbytery of Savannah of the Southern Presbyterian Church established an Administrative Commission under the laws of said Church with full authority to act in the premises and with special instruc-

tions to visit the said Ruling Elders of said Plaintiff Corporation in an attempt to correct the differences that had arisen.

9. Said Administrative Commission was further instructed to visit Mr. Clifford H. Brewton with a view towards discussing with him the said difficulties. Members of said Commission did visit the said Clifford H. Brewton at which time he affirmed his renunciation letter of April 17, 1966, and declined to reconsider his action or to confer with said Administrative Commission but stated that his action was final.

[64] 10. Members of said Administrative Commission visited each of the Ruling Elders of Plaintiff Corporation with the exception of Steve Miller who refused to comment for the Commission. Each Ruling Elder visited, except for one, affirmed that he voted in favor of the above mentioned Resolution, that the same definitely expressed his wishes and that he was unwilling to reconsider his action or to confer with the full Administrative Commission but stated that his action was final.

11. The Administrative Commission, because said Ruling Elders confirmed their previous decisions to withdraw from the Southern Presbyterian Church and refused to discuss the matter further with the full Administrative Commission, were left with no alternative except to acknowledge that said persons had removed themselves from office and membership in the Southern Presbyterian Church, whereupon the said Administrative Commission withdrew from each of them all authority to exercise office derived from the Southern Presbyterian Church as set out in the Book of Church Order of said Church, said action by the Administrative Commission being attached hereto, marked Exhibit "B", and made a part hereof.

12. The Administrative Commission determined that since only one Ruling Elder of Plaintiff Corporation was in good standing with the Southern Presbyterian Church, that it was necessary under the laws of said Southern Presbyterian Church for the Presbytery of Savannah to assume original jurisdiction over the aforesaid property claimed by Plaintiff which action was taken and is a part of the aforesaid Exhibit "B".

13. That the decision of the Administrative Commission which was with full authority of the Savannah Presbytery, was not appealed under the rules of Church Order of the Southern Presbyterian Church and the same therefore has become final and binding on the parties and this Court.

[65] 14. Defendants have a right of possession of the subject property under the laws and constitution of the Southern Presbyterian Church, the State of Georgia, and the United States of America.

15. Since said date of April 17, 1966, the aforesaid Plaintiff and members of the congregation and said Ruling Elders who voted in the affirmative on said Resolution have appropriated the property which is the subject of this legal action to their use as a church separate and independent from the Southern Presbyterian Church, said action being in violation of the laws of Georgia, the United States of America, and the Southern Presbyterian Church.

16. The aforesaid appropriation by the parties and Plaintiff corporation constitutes a continuing trespass in denying Defendants access to said property. That it is necessary that Plaintiff and all others individually who are associated with said trespass be enjoined from further trespass or defendants will be irreparably damaged, harmed, and injured, and the peace and dignity of their

right of possession of said property for religious worship for those loyal to the Southern Presbyterian Church will be impaired.

WHEREFORE DEFENDANTS PRAY:

(a) That Plaintiff's Petition be denied.

(b) That the Court add such parties as may be necessary to carry out its orders herein

(c) That Plaintiffs and all additional parties Plaintiff who may be added be permanently enjoined from appropriating to their use the property which is the subject of this action or in any way exercising dominion over the same and that Defendant, Savannah Presbytery, be declared to have a right of possession of said property under the Rules of Church Order of the Presbyterian Church in the United States.

/s/ Frank S. Cheatham, Jr.
Attorney for Defendant

Exhibit "A"

[66] WHEREAS, the Congregation of the Mary Elizabeth Blue Hull Memorial Presbyterian Church affirms and believes the Scriptures of the Old and New Testaments to be the Word of God, the only infallible rule of faith and practice, and the Westminster Confession of Faith and the Larger and Shorter Catechisms, as originally adopted by the Presbyterian Church in the United States in 1861 to be the system of doctrine taught in the Holy Scriptures, and

WHEREAS, the Presbyterian Church in the United States has violated its constitution as originally adopted in 1861 and departed from the faith and practice as held by said Church at the time the Mary Elizabeth Blue Hull

Memorial Presbyterian Church became affiliated. Some of these violations and departures being:

1) The ordaining of women as preachers and ruling elders contrary to the teaching of Scripture in I Timothy 2:11-15, Titus 2:3-5, and I Corinthians 14:34;

2) Making pronouncements and recommendations which concern civil, economic, social and political matters, which is contrary to the Confession of Faith, Chapter 33-4.

3) Giving support to the removal of Bible reading and prayers by children in the public schools;

4) Making declarations which would have the effect of assuming ownership of local church property contrary to civil law, thereby assuming illegal authority in civil affairs, and

WHEREAS, the Board of Christian Education of the Presbyterian Church in the United States has adopted the Foundation Papers for the Covenant Life Curriculum which tend to supersede the Confession of Faith, particularly Chapter 1, and introduces and teaches Neo-orthodoxy, which is alien to the Confession of Faith and the Catechisms as originally adopted by the Presbyterian Church in the United States in 1861, and

WHEREAS, the Presbyterian Church in the United States through its General Assembly has caused all members of the Church to remain in the National Council of the Churches of Christ in the United States of America, and willingly accepts the leadership of said council which advocates such things as civil disobedience, the subverting of parental authority, and intermeddling in civil affairs.

NOW THEREFORE BE IT RESOLVED THAT:

The Congregation of the Mary Elizabeth Blue Hull Memorial Presbyterian Church declares itself to be an independent Presbyterian Church, and does herewith sever all connections with and remove itself from all ecclesiastical control, jurisdiction and oversight of the Presbyterian Church in the United States including the National Council of the Churches of Christ in the United States of America and the World Council of Churches, in order that we may reaffirm and maintain our adherence to the Westminster Confession of Faith and the Larger and Shorter Catechisms as originally adopted by the Presbyterian Church in the United States in 1861 as containing the system of doctrine taught in the Holy Scriptures, and declare our obedience to the Word of God.

APPROVED BY CONGREGATION, APRIL 17, 1966.

M. R. Baker
R. W. Cowan
C. P. Ford, Clerk
L. R. Herman
Steve Miller
R. M. Rehm
W. S. Stegin
G. C. Smith
C. H. Brewton, Moderator

/s/ Carroll P. Ford,
Clerk of Congregational meeting

/s/ Clifford H. Brewton,
Moderator of Congregational meeting

WITNESS

/s/ Lester R. Herman

[Verification omitted in printing.]

[19] STATE OF GEORGIA :
COUNTY OF CHATHAM :

TO THE SUPERIOR COURT OF CHATHAM COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS.

PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5005

Answer and Crossbill

NOW COME Defendants in the above styled action and for Answer respectfully show the following:

1. Defendants neither admit nor deny Paragraph One (1) of Plaintiff's Petition for want of sufficient information.

2. Defendants admit Paragraph Two (2) of Plaintiff's Petition.

3. Defendants admit that Plaintiff and others are now in possession of the property described in Paragraph Three (3) of Plaintiff's Petition, but for want of sufficient information can neither admit nor deny the remaining allegations in said paragraph.

4. Defendants admit the accuracy of Exhibit "A" of Paragraph Four (4) of Plaintiff's Petition but deny the remaining allegations in said paragraph.

5. Defendants deny the allegations in Paragraph Five (5) of Plaintiff's Petition.

FOR FURTHER PLEA, ANSWER AND CROSSBILL DEFENDANTS SHOW:

6. That certain members of the congregation of plaintiff Corporation including all active Ruling Elders, on April 17, 1966, by Resolution declared themselves "to be an autonomous Presbyterian church under the active Lordship of Christ Jesus and does herewith sever all connections with and remove itself from all ecclesiastical control, jurisdiction and oversight of the Presbyterian Church in the United States of America . . .", a copy of said Resolution being [20] attached hereto, marked Exhibit "A", and made a part hereof.

7. That prior to said action of April 17, 1966, the aforesaid members of said congregation and active Ruling Elders who voted in the affirmative on said Resolution as well as Plaintiff Corporation, were by their former actions and active practice, members of the Presbyterian Church in the United States, (hereinafter called the Southern Presbyterian Church), and by virtue of such membership and association, were individually and collectively subject to the constitution and laws of said Southern Presbyterian Church, said Church being representative in form and not congregational.

8. That a copy of the aforesaid Resolution of April 17, 1966, was received by the Presbytery of Savannah of the Southern Presbyterian Church as well as a letter dated April 18, 1966, from the pastor of said church, Todd W. Allen, which stated in part as follows: "This is to officially notify the Savannah Presbytery that as of this date, April 18, 1966, I am no longer under the authority or jurisdiction of the Savannah Presbytery, the Synod of Georgia, and the Presbyterian Church in the United States".

9. Thereafter the Presbytery of Savannah of the Southern Presbyterian Church established an Administra-

tive Commission under the laws of said Church with full authority to act in the premises and with special instructions to visit the said Ruling Elders of said Plaintiff Corporation in an attempt to correct the differences that had arisen.

10. Said Administrative Commission was further instructed to visit Mr. Todd W. Allen with a view towards discussing with him the said difficulties. Members of the Commission did visit the said Todd W. Allen at which time he affirmed his renunciation letter of April 18, 1966, and declined to reconsider his action or to confer with said Administrative Commission but stated that his action was final.

[21] 11. Members of said Administrative Commission visited or communicated with or received communications from each of the Ruling Elders of Plaintiff Corporation. Each Ruling Elder affirmed that he voted in favor of the above mentioned Resolution, that the same definitely expressed his wishes and that he was unwilling to reconsider his action or to confer with the full Administrative Commission but stated that his action was final.

12. The Administrative Commission, because said Ruling Elders confirmed their previous decisions to withdraw from the Southern Presbyterian Church and refused to discuss the matter further with the full Administrative Commission, were left with no alternative except to acknowledge that said persons had removed themselves from office and membership in the Southern Presbyterian Church, whereupon the said Administrative Commission withdrew from each of them all authority to exercise office derived from the Southern Presbyterian Church as set out in the Book of Church Order of said Church, said action by the Administrative Commission being attached hereto, marked Exhibit "B", and made a part hereof.

13. The Administrative Commission determined that since no Ruling Elder of Plaintiff Corporation was in good standing with the Southern Presbyterian Church, that it was necessary under the laws of said Southern Presbyterian Church for the Presbytery of Savannah to assume original jurisdiction over the aforesaid property claimed by Plaintiff which action was taken and is a part of the aforesaid Exhibit "B".

14. That the decision of the Administrative Commission which was with full authority of the Savannah Presbytery, was not appealed under the rules of Church Order of the Southern Presbyterian Church and the same therefore has become final and binding on the parties and this Court.

[22] 15. Defendants have a right of possession of the subject property under the laws and constitution of the Southern Presbyterian Church, the State of Georgia, and the United States of America.

16. Since said date of April 17, 1966, the aforesaid Plaintiff and members of the congregation and said Ruling Elders who voted in the affirmative on said Resolution, have appropriated the property which is the subject of this legal action to their use as a Church separate and independent from the Southern Presbyterian Church, said action being in violation of the laws of Georgia, the United States of America, and the Southern Presbyterian Church.

17. The aforesaid appropriation by the parties and Plaintiff Corporation constitutes a continuing trespass in denying Defendants access to said property. That it is necessary that Plaintiff and all others individually who are associated with said trespass be enjoined from further trespass or Defendants will be irreparably damaged, harmed, and injured, and the peace and dignity of their

right of possession of said property for religious worship for those loyal to the Southern Presbyterian Church will be impaired.

WHEREFORE DEFENDANTS PRAY:

(a) That Plaintiff's Petition be denied.

(b) That the Court add such parties as may be necessary to carry out its orders herein

(c) That Plaintiffs and all additional parties Plaintiff who may be added be permanently enjoined from appropriating to their use the property which is the subject of this action or in any way exercising dominion over the same and that Defendant Savannah Presbyterian, be declared to have a right of possession of said property under the Rules of Church Order of the Presbyterian Church in the United States.

/s/ Frank S. Cheatham, Jr.
Attorney for Defendants

Exhibit "A"

[23] A TRUE COPY

A Resolution

RECOMMENDED BY THE SESSION & PASTOR FOR ADOPTION BY THE CONGREGATION OF THE EASTERN HEIGHTS PRESBYTERIAN CHURCH

Whereas, the Congregation of the Eastern Heights Presbyterian Church of Savannah, Georgia affirms and believes the Scriptures of the Old and New Testaments to be the Word of God, the only infallible rule of faith and practice, and the Westminister Confession of Faith and the Larger and Shorter Catechisms, as originally adopted by the Presbyterian Church in the United States in 1861, to be the system of doctrine taught in the Holy Scriptures, and

Whereas, in our judgment and interpretation of the Scriptures and the Westminister Confession of Faith, the Presbyterian Church in the United States has violated its constitution and departed from the faith and practice as held by said Church at the time Eastern Heights Presbyterian Church became affiliated, some of these violations and departures being:

1. The ordaining of women as preachers and ruling elders contrary to the teaching of the Scriptures in I Timothy 2:11-3:5; Titus 1:6; 2:3-5; I Corinthians 14:34-35.

2. Making pronouncements and recommendations which concern civil, economic, social and political matters, which is contrary to the Confession of Faith, Chapter 33:4.

3. Giving support to the removal of Bible reading and prayers by children in the public schools, and

Whereas, through the Board of Christian Education of the Presbyterian Church in the United States, Foundation Papers have been adopted for the Covenant Life Curriculum which tend to supercede the Confession of Faith, particularly Chapter I, and introduces and teaches Neo-orthodoxy, which is alien to the Confession of Faith and the Catechisms as originally adopted in 1861 by the Presbyterian Church in the United States, and

Whereas, the Presbyterian Church in the United States through its General Assembly has caused all members of the Church to remain in the National Council of the Churches of Christ in the United States of America, and willingly accepts the leadership of said council which advocates such things as the subverting of parental authority, civil disobedience, and intermeddling in civil affairs, now therefore, be it

Resolved, That the Congregation of the Eastern Heights Presbyterian Church declares itself to be an autonomous Presbyterian Church under the active Lordship of Christ Jesus and does herewith sever all connections with and remove itself from all ecclesiastical control, jurisdiction and oversight of the Presbyterian Church in the United States of America and the World Council of Churches in order that we may reaffirm and maintain our adherence to the Westminister Confession of Faith and the Larger and Shorter Catechisms as originally adopted by the Presbyterian Church in the United States as containing the system of doctrine taught in the Holy Scriptures, and declare our obedience to the Word of God.

ADOPTED AT A CONGREGATIONAL MEETING HELD ON April 17, 1966

CLERK (Signature illegible)

MODERATOR (Signature illegible)

Portion of Exhibit "B"

[29] ACTION OF THE ADMINISTRATIVE COMMISSION APPOINTED BY THE PRESBYTERY OF SAVANNAH OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES TO RESOLVE THE DIFFICULTIES IN THE HULL MEMORIAL PRESBYTERIAN CHURCH AND THE EASTERN HEIGHTS PRESBYTERIAN CHURCH.

WHEREAS, A Resolution dated April 17, 1966 was received by the Presbytery of Savannah from the Eastern Heights Presbyterian Church of Savannah, Georgia stating in part that the said Eastern Heights Presbyterian Church severed all ecclesiastical relations with the Presbytery of Savannah and the Presbyterian Church in the United States, and

WHEREAS, Mr. B. C. Kirkpatrick, a Ruling Elder serving on the Session of the said Eastern Heights Presbyterian Church did affirm, by a letter addressed to the Chairman of this Administrative Commission dated May 24, 1966, that he was in full accord with the above mentioned Resolution, and

WHEREAS, By this action the said B. C. Kirkpatrick did renounce his office in and communion with the Presbyterian Church in the United States, now

THEREFORE, This Administrative Commission, in the name of and by the authority and power vested in it by the Presbytery of Savannah and the Constitution of the Presbyterian Church in the United States, *Book of Church Order*, section 111-3, does hereby record the irregularity of the actions of the said B. C. Kirkpatrick in renouncing his office in and communion with the Presbyterian Church in the United States, and does hereby declare that he has re-

moved himself from office and membership in the Presbyterian Church in the United States, and does hereby withdraw from him all authority to exercise office derived from the Presbyterian Church in the United States.

THE ABOVE ACTION was unanimously adopted by the Administrative Commission on June 2, 1966 at its meeting in Savannah, Georgia. In accordance with the *Book of Church Order*, sections 118-2 and 118-3, copies of this action will be forwarded to the said B. C. Kirkpatrick, and the Action [30] will be filed with the Stated Clerk of the Presbytery of Savannah on June 8, 1966.

/s/ J. Lehmon Brantley
Chairman, the Administrative Commission

/s/ Chalmers F. McCutchen
/s/ Frank Alfred Mathes
/s/ William A. Crosland, Jr.
/s/ J. E. Lambright
/s/ William C. Cox

[Verification omitted in printing.]

[73] STATE OF GEORGIA)
COUNTY OF CHATHAM)

IN THE SUPERIOR COURT OF SAID COUNTY

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS
PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5003

Answer to Defendant's Answer and Crossbill

NOW COMES the plaintiff in the above styled action and in answer to the defendant's answer and cross bill shows the following:

1. Plaintiff admits paragraph six of defendant's answer and cross bill.

2. For want of sufficient information the plaintiff neither admits nor denies so much of paragraph six a (6a) which refers to the Elders and congregation having by their actions and practices subjected themselves individually and collectively to the constitution and laws of the Presbyterian Church in the United States (Southern Presbyterian Church).

(a) So much of said paragraph which refers to the church being representative and not congregational is admitted for spiritual affairs only, but is emphatically denied as vesting said church (Presbyterian Church in the United States) with any right, title or interest in and to the plaintiff's property.

3. Plaintiff admits paragraphs seven, eight, nine and ten of the defendant's answer and cross bill.

4. For want of sufficient information the plaintiff neither admits or denies paragraphs eleven and twelve of defendant's answer and cross bill.

[74] 5. Plaintiff denies paragraphs thirteen, fourteen, fifteen and sixteen of defendant's answer and cross bill.

WHEREFORE PLAINTIFF PRAYS:

A. That defendant's answer and cross bill be denied.

B. That title and right to possession of the property described in plaintiff's petition be declared to be in the plaintiff under the law of the State of Georgia.

/s/ Richard T. Cowan
Attorney for Plaintiff.

[Certificate of Service omitted in printing.]

[32] STATE OF GEORGIA)
COUNTY OF CHATHAM)

TO THE SUPERIOR COURT OF CHATHAM COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS.

PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5005

Answer to Defendants Answer and Crossbill

NOW COMES the Plaintiff in the above styled action and in answer to the Defendants Answer and Crossbill shows the following:

1. Plaintiff admits Paragraph Six (6) of Defendants Answer and Crossbill.

2. For the want of sufficient information the Plaintiff neither admits nor denies so much of Paragraph Seven (7) which refers to the Elders and congregation having by their actions and practices subjected themselves individually and collectively to the constitution and laws of the Presbyterian Church in the United States (Southern Presbyterian Church).

So much of said paragraph which refers to the church being representative and not congregational is admitted for spiritual affairs only, but is emphatically denied as vesting said church (Presbyterian Church in the United States) with any right, title or interest in and to the plaintiff's property.

The Plaintiff denies the rest of said paragraph as the same applies to it.

[33] 3. Plaintiff admits Paragraph Eight (8) of Defendants Answer and Crossbill.

4. For want of sufficient information the Plaintiff neither admits nor denies Paragraphs Nine (9), Ten (10), and Eleven (11) of the Defendants Answer and Crossbill.

5. Plaintiff admits the existence of Exhibit "B" of Paragraph Twelve (12) of the Defendants Answer and Crossbill but for want of sufficient information Plaintiff neither admits nor denies the remaining allegations contained therein.

6. Paragraph Thirteen (13) of Defendants Answer and Crossbill is denied.

7. So much of Paragraph Fourteen (14) of Defendants Answer and Crossbill which refers to the decision of the Savannah Presbytery and the matter of the appeal of same as it applies to those affected by said decision are admitted.

That part of said paragraph which refers to the decision as being final upon the plaintiff and this court is emphatically denied.

8. Paragraph Fifteen (15), Sixteen (16) and Seventeen (17) of the Defendants Answer and Crossbill are denied.

WHEREFORE PLAINTIFF PRAYS:

(a) Defendants Answer and Crossbill be denied.

(b) That title and right to possession of the property described in the Plaintiff's Petition be declared to be in the Plaintiff under the law of the State of Georgia.

/s/ Owen H. Page
Attorney for Plaintiff

[Verification and Certificate of Service omitted in printing.]

[36] STATE OF GEORGIA)
COUNTY OF CHATHAM)

TO THE SUPERIOR COURT OF SAID COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS.

PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5005

Amendment

NOW COMES THE PLAINTIFF in the above styled action and with leave of the court first had and obtained, files this its amendment to its petition:

By adding at the end of paragraph one (1) of said petition: "On April 17, 1966, at a properly called and convened congregational meeting, the plaintiff by the unanimous vote of the congregation adopted a resolution affirming its belief in the scriptures of the Old and New Testaments, to be the word of God, the only infallible rule of faith and practice, and the Westminister Confession of faith and the Larger and Shorter catechisms as originally adopted by the church in the United States in 1861 to be the doctrine taught in the Holy Scripture and declared that the Presbyterian Church in the United States had violated and departed from the faith and practice of said church when the plaintiff became affiliated with it. By the adoption of the resolution, the plaintiff severed its affiliation with the Presbyterian Church in the United States. A copy of said resolution which is hereto attached, made a part hereof and marked Exhibit "B" was transmitted to

the Savannah Presbytery and the Presbyterian Church in the United States".

[37] WHEREFORE plaintiff prays that this its amendment be allowed, subject to objection.

/s/ Owen H. Page
Attorney for Plaintiff

[Verification, Order of Court and Certificate of Service omitted in printing.]

[75] STATE OF GEORGIA)
COUNTY OF CHATHAM)

IN THE SUPERIOR COURT OF SAID COUNTY

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS.
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.
} Case Number 5003

Amendments to Plaintiff's Petition

NOW COMES, plaintiff in the above captioned case and with leave of the Court first had and obtained makes and files this its amendments to its petition as follows:

1. Plaintiff amends its petition by adding thereto a new paragraph to be known as paragraph six (6) and to read as follows:

6. Plaintiff says a portion of its property, to-wit, Lots Numbered Fifty-three (53) and Fifty-four (54), Thomas Ward, Savannah, Chatham County, Georgia, situated at the Northeast corner of Bull and 37th Streets, having a frontage of one hundred twenty-five (125') feet on Bull street and a depth along 37th street of one hundred twenty (120') feet was acquired by deed dated January 3, 1914, from Savannah Trust Company. The aforesaid deed contained a trust provision, providing that said property was to be used as and for a place of worship by a Church of the Presbyterian denomination to be known as the MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH. This provision referred to the local church corporation and created a trust in favor of said local congregation. A copy of said [76] deed is attached hereto marked Exhibit "A" and made a part hereof.

2. Plaintiff amends its petition by adding thereto a new paragraph to be known as paragraph seven (7) and to read as follows:

7 (a). Plaintiff became affiliated with the Presbyterian Church in the United States in 1890 on a voluntary basis, but to plaintiff's knowledge has never been officially voted into the Presbyterian Church in the United States.

(b) Plaintiff contends and affirms that it was not created by the Presbyterian Church in the United States, but was organized and created as an independent Presbyterian Church, and therefore is not a creature of the Presbyterian Church in the United States. Plaintiff further shows that none of the defendants ever contributed any monies to purchase, build, operate or maintain said local church.

3. Plaintiff amends its petition by adding thereto a new paragraph to be known as paragraph eight (8) and to read as follows:

8 (a). In furtherance of the aforesaid trust provision, plaintiff is bound to uphold, administer, practice and teach the Presbyterian faith as it existed on the date of said conveyance in 1914, and as originally intended by the Congregation at the formation of plaintiff Church, and that any deviation from the fundamental, substantial doctrines and practices as originally held in 1890 and 1914, the date of the conveyance, would constitute an unlawful violation of the trust.

[77] (b) Plaintiff further alleges that the Presbyterian Church in the United States taught and practiced the Presbyterian faith on the date of said deed substantially in the manner as plaintiff. However, since that time the Presbyterian Church in the United States has plainly dis-

regarded its original constitution, perverted its accepted beliefs and departed from the Presbyterian faith and practice held at the time of the said conveyance, and that these changes are out of harmony with the Ecclesiastical Laws and principles in force at that time and that such violations constitute a revolutionary, fundamental, unlawful and radical deviation from the Presbyterian faith. Plaintiff alleges that the aforesaid deviations and radical departures are as follows:

A. Teaching and endorsing civil disobedience.

B. Ordaining women as preachers and ruling Elders.

C. Making pronouncements and recommendations which concern civil, economic, social and political matters.

D. Giving support to the removal of Bible reading and Prayer in the public schools.

E. Making declarations which would have the effect of assuming ownership of Local Church property.

F. Printing official publications which teach Doctrines fundamentally divergent to the Presbyterian Faith.

G. Distributing to the Presbyterian Churches a study booklet teaching universalism contrary to Presbyterian faith and doctrine, and commending [78] it to local churches, and refusing, when given an opportunity to pronounce its teachings erroneous, thereby giving sanction to universalism.

H. Invalidating and replacing parts of the Confession of Faith which the Presbyterian Church in the United States is bound to uphold.

I. Vigorously and continuously participating as an agency member of the National Council of the Churches of Christ in the United States of America in spite of repeated

requests from many Presbyteries to withdraw, and in so remaining a member, forces every Presbyterian Church and individual member to belong to the said council, and gives representative backing to actions of said council in the areas of sex, race and world affairs which are radical departures from the faith and practice of the Presbyterian Faith as it existed at the time of the aforementioned deed conveyance and organization of plaintiff church.

J. This connectional relationship to the said council is of such a constitutional nature, that the actions of the council are the actions of the members through representation, and that being a member of the Presbyterian Church in the United States and the National Council of Churches of Christ in the United States of America are one and the same, and this being the case, in order for a local Church to disaffiliate with the said council must disaffiliate with the Presbyterian Church in the United States.

K. The aforesaid deviations from the Presbyterian Faith have occurred since Plaintiff's affiliation with the [79] Presbyterian Church in the United States in 1890, and plaintiff; adhering to the standards, with their basic doctrines and practices, as accepted in 1890 and 1914, is the true successor of the original congregation and thus entitled to retain use and ownership of the property belonging to the congregation.

L. Plaintiff further contends that in order to remain true to the Presbyterian Doctrines and Practices in force in 1890 and 1914, Plaintiff found it necessary to withdraw its affiliation with the Presbyterian Church in the United States; such action taking place on April 17, 1966, by Resolution marked Exhibit "B" attached hereto and made a part hereof.

regarded its original constitution, perverted its accepted beliefs and departed from the Presbyterian faith and practice held at the time of the said conveyance, and that these changes are out of harmony with the Ecclesiastical Laws and principles in force at that time and that such violations constitute a revolutionary, fundamental, unlawful and radical deviation from the Presbyterian faith. Plaintiff alleges that the aforesaid deviations and radical departures are as follows:

A. Teaching and endorsing civil disobedience.

B. Ordaining women as preachers and ruling Elders.

C. Making pronouncements and recommendations which concern civil, economic, social and political matters.

D. Giving support to the removal of Bible reading and Prayer in the public schools.

E. Making declarations which would have the effect of assuming ownership of Local Church property.

F. Printing official publications which teach Doctrines fundamentally divergent to the Presbyterian Faith.

G. Distributing to the Presbyterian Churches a study booklet teaching universalism contrary to Presbyterian faith and doctrine, and commending [78] it to local churches, and refusing, when given an opportunity to pronounce its teachings erroneous, thereby giving sanction to universalism.

H. Invalidating and replacing parts of the Confession of Faith which the Presbyterian Church in the United States is bound to uphold.

I. Vigorously and continuously participating as an agency member of the National Council of the Churches of Christ in the United States of America in spite of repeated

requests from many Presbyteries to withdraw, and in so remaining a member, forces every Presbyterian Church and individual member to belong to the said council, and gives representative backing to actions of said council in the areas of sex, race and world affairs which are radical departures from the faith and practice of the Presbyterian Faith as it existed at the time of the aforementioned deed conveyance and organization of plaintiff church.

J. This connectional relationship to the said council is of such a constitutional nature, that the actions of the council are the actions of the members through representation, and that being a member of the Presbyterian Church in the United States and the National Council of Churches of Christ in the United States of America are one and the same, and this being the case, in order for a local Church to disaffiliate with the said council must disaffiliate with the Presbyterian Church in the United States.

K. The aforesaid deviations from the Presbyterian Faith have occurred since Plaintiff's affiliation with the [79] Presbyterian Church in the United States in 1890, and plaintiff; adhering to the standards, with their basic doctrines and practices, as accepted in 1890 and 1914, is the true successor of the original congregation and thus entitled to retain use and ownership of the property belonging to the congregation.

L. Plaintiff further contends that in order to remain true to the Presbyterian Doctrines and Practices in force in 1890 and 1914, Plaintiff found it necessary to withdraw its affiliation with the Presbyterian Church in the United States; such action taking place on April 17, 1966, by Resolution marked Exhibit "B" attached hereto and made a part hereof.

2. Defendants amend the Prayer to Plaintiff's Petition by striking Paragraph (c) in its entirety and inserting in lieu thereof a new Paragraph (c) and by adding a new Paragraph lettered (d), all as follows:

[85] "(c) That Plaintiff Corporation, its officers and members who voted in favor of the Resolution of April 17, 1966 as set out in Defendants' Cross-Bill, be enjoined permanently from appropriating to their use the property which is the subject of this Action as set out in Paragraph 3 of Plaintiff's Petition and Paragraph 6 of Defendants' Cross-Bill as amended."

"(d) That Defendant, the *SAVANNAH PRESBYTERY* of the *PRESBYTERIAN CHURCH IN THE UNITED STATES*, be decreed to have an implied trust over the aforesaid property as the rightful representative of said CHURCH for the use and benefit of those members adhering to the doctrines and regulations of the *PRESBYTERIAN CHURCH IN THE UNITED STATES.*"

WHEREFORE, PETITIONER PRAYS: That said amendments be allowed:

/s/ Frank S. Cheatham, Jr.,
Attorney for Defendants

[Order of court, verification and Certificate of Service omitted in printing.]

[39] STATE OF GEORGIA)
COUNTY OF CHATHAM)

IN THE SUPERIOR COURT OF CHATHAM COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH
VS.
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.
Case Number 5005

Amendment to Defendants' Cross-Bill

NOW COME, Defendants in the above styled Action and file this their Amendment as follows:

1. Defendants amend their Cross-Bill to Plaintiff's Petition by adding a new paragraph to be known as Paragraph "Eighteen" as follows:

"18. That in addition to the property described in Paragraph 3 of Plaintiff's Petition, Plaintiff Corporation owns the property known as Lots Eighteen, Twenty and Twenty-one, Block 14, Deiter Heights, Ross Ward, Savannah, Chatham County, Georgia, the deed to Plaintiff Corporation being dated June 7, 1952 and recorded in Deed Book 55-X, Folio 95, Chatham County, Georgia, Records. Defendants show that said property is used by said Plaintiff Corporation as a parsonage for the minister and is an integral part of the Church property."

2. Defendants amend the Prayer to Defendants' Answer and Cross-Bill by striking Paragraph (c) in its entirety and inserting in lieu thereof a new Paragraph (c) and by adding a new Paragraph lettered (d), all as follows:

"(c). That Plaintiff Corporation, its officers and members who voted in favor of the Resolution of April 17,

1966 as set out in Defendants' Cross-Bill be enjoined permanently from appropriating to their use the property which is the subject of this Action as set out in Paragraph 3 of Plaintiff's Petition and Paragraph 18 of Defendants' Cross-. [40] Bill as amended."

"(d). That Defendant, the *SAVANNAH PRESBYTERY* of the *PRESBYTERIAN CHURCH IN THE UNITED STATES*, be decreed to have an implied trust over the aforesaid property as the rightful representative of said CHURCH for the use and benefit of those members adhering to the doctrines and regulations of the *PRESBYTERIAN CHURCH IN THE UNITED STATES*."

WHEREFORE, PETITIONER PRAYS: That said amendments be allowed.

/s/ Frank S. Cheatham, Jr.,
Attorney for Defendants

[Order of court, verification and Certificate of Service omitted in printing.]

[42] STATE OF GEORGIA)
COUNTY OF CHATHAM)

TO THE SUPERIOR COURT OF SAID COUNTY

EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS.

PRESBYTERIAN CHURCH IN THE UNITED STATES AND J. LEHMON BRANTLEY, CHAIRMAN OF THE ADMINISTRATIVE COMMISSION OF THE PRESBYTERY OF SAVANNAH

Case Number 5005

Amendment

NOW COMES THE PLAINTIFF in the above styled action and with leave of the court first had and obtained, files this its amendment to its petition:

1. By adding as parties plaintiffs in the above styled action the following: Frank L. Perry, Sr., John Bruning, Lester R. Sargent, Hardin C. Norman, and Armin S. Hubert, Trustees of Eastern Heights Presbyterian Church.

2. By adding at the end of paragraph 1, of said petition as amended: Said violations and departures specified in said resolution (Exhibit "B") constitute a substantial and fundamental deviation from the practices of the Presbyterian Church defined in the Book of Church Order: Chapter 1-2, 1-3, and Chapter 33-4 of Confession of Faith which provide:

1-2 "The power which Christ has given his Church in wholly moral and spiritual, and constitutes the Church a kingdom and government district, from the civil commonwealth. This power rests not in individuals but in the Church as a whole."

1-3 "The sole function of the Church are to proclaim, to administer and to enforce the law of Christ revealed in Scripture. The exercise of Church power has divine sanction only when in conformity with the Word."

33-4 "Synods are councils are to handle or conclude nothing but that which is ecclesiastical; and are not to intermeddle with civil affairs which concern the commonwealth unless by way of humble petition in cases extra ordinary; or by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate."

In addition to the deviations and departures specified in [43] Exhibit "B" the Presbyterian Church in the United States has advocated the following:

1. Pronouncement in matters involving international issues such as the Viet Nam War.

2. Dissemination of publications denying the Holy Trinity and other publications violating the morals and ethical standards of the Presbyterian faith.

All of the above constitute a substantial, fundamental and radical departure and deviation from the faith dogma, practices of the Presbyterian Church in the United States as defined in the Book of Church Order. The deviations specified in Exhibit "B", and alleged, have occurred since the plaintiffs' affiliation with the Presbyterian Church in the United States in 1930.

The plaintiffs are seeking to protect the purity of their faith and avoid the propagation of one in conflict with that in existence at the time they affiliated. They as the loyal adherers should have title to the church property quieted and confirmed in them to preserve the trust.

3. By adding at the end of paragraph 3: Lots 1 through 7, Myers Park Place, Oliver Ward, Block 17, Sa-

vannah, Georgia, were conveyed by the Trustees of the Independent Presbyterian Church of Savannah to Eastern Heights Presbyterian Church, a religious corporation.

Lots 8 and 9, Oliver Ward, Savannah, Georgia, were conveyed by Bennie Barker to Frank L. Perry, Sr., et al., as Trustees of Eastern Heights Presbyterian Church.

Lots 18, 20, and 22, Block 14, Dieter Heights, Roos Ward, Savannah, Georgia, on which the church manse is located were conveyed by Ray Zoucks to Frank L. Perry, Sr., et al., as Trustees of Eastern Heights Presbyterian Church to be held for the use and benefit of the congregation of Eastern Heights Presbyterian Church.

[44] WHEREFORE plaintiff prays that this its amendment be allowed subject to objection.

/s/ Owen H. Page
Attorney for Plaintiff

[Verification, Order of Court and Certificate of Service omitted in printing.]

[87] STATE OF GEORGIA)
COUNTY OF CHATHAM)

IN THE SUPERIOR COURT OF SAID COUNTY

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS.
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.

Case Number 5003

Plaintiff's Amendment to Plaintiff's Amended Petition

NOW COMES PLAINTIFF in the above captioned case and with leave of the Court first had and obtained makes and files this its amendment as follows:

1. Plaintiff amends its petition by adding thereto the following to paragraph eight (8) (b) to be known as subparagraph M. and to read as follows:

8. (b) M. Plaintiff shows that defendants have further deviated from the Faith by the General Assembly declaring parts of the Confession of Faith, Chapter 3, "not essential to Reformed Theology" and not an adequate statement of Faith. This section deals with the doctrine of predestination and is a fundamental and vital tenet of all Presbyterian Churches.

2. Plaintiff amends its petition by adding thereto the following to paragraph eight (8) (b) to be known as subparagraph N. and to read as follows:

8. (b) N. By approving reading material that denies the existence of the Trinity, a basic fundamental belief of all Presbyterian Churches.

WHEREFORE plaintiff prays that this its amendment be allowed subject to objections.

/s/ Richard T. Cowan
Attorney for Plaintiff

[Order of Court and Certificate of Service omitted in printing.]

council is. "It belongeth to synods and councils, ministerially, to determine controversies of faith, and cases of conscience; to set down rules and directions for the better ordering of the public worship of God, and government of his [160] church; to receive complaints in cases of maladministration, and authoritatively to determine the same; which decrees and determinations, if consonant to the word of God, are to be received with reverence and submission, not only for their agreement with the word, but also for the power whereby they are made, as being an ordinance of God, appointed thereunto in his word."

* * *

[163] *Mr. Cowan*: Do you have any other deviations there that the church—objected to?

The Court: Let's don't give it a name. You refer to it as a deviation. Something that the jury will have to be called upon to decide, so let's don't use the term like—

Mr. Cowan: What else do you have—

Rev. Brewton: Well, I'm going to try to be quick on this—feel like we're maybe dragging it out too long. The changes in the Constitution providing for the ordination of women into the ministry and eldership—this act was in direct violation of the form of government and the Holy Scriptures; the Book of Church Order in outlining the questions asked of elders and ministers speaks of them being men and brothers and the Scriptures relating to the portion of the form of government speaks of these men as being wise stewards and names them as men and we have some quotations out of the Book of Church Order in reference to these violations. In other words, to ordain a woman as a preacher is a violation of the Book of Church Order which is one of the documents in the Constitution [164] of the Presbyterian Church, U. S. and the General Assembly voted to do it.

Mr. Cowan: Reverend Brewton, do you have the Book of Church Order?

Rev. Brewton: I don't have a Book of Church Order with me. I need one. . . Take Chapter 26, paragraph 2 from the Book of Church Order, "When a congregation is convened for the election of a Pastor, the Church Session shall appoint one of their number to call the congregational meeting to order, to lead the people in solemn prayer for Divine guidance, and to preside until the congregation shall elect a Moderator. For the orderly conduct of the election of a Pastor or an Associate Pastor, it is desirable that the congregation elect a Minister of the Presbyterian Church in the United States to preside. But if this is impracticable, they may elect any male member of that church as Moderator for that meeting."—"They may elect any male—adult male member of that church as Moderator for that meeting." And then in—

Mr. Cheatham: Would you give the page, please?

Rev. Brewton: That is found on page 68 and 69, the Book of Church Order, the Presbyterian Church in the United States. Now, also in Chapter 12—

The Court: May I interrupt you just a minute, Reverend? Some of us not being Presbyterian, the Book of Church Order, that's more or less the Constitution of the Presbyterian Church, isn't it?

[165] *Rev. Brewton:* The Constitution of the Presbyterian Church, Your Honor, consists of five documents: The Confession of Faith, which was formulated by the Westminster Assembly of Divines in the 1600's, held by all Presbyterians as the doctrinal statement of Presbyterians. That's the Confession of Faith. The Book of Church Order is a part of the Constitution—

The Court: Is it amendable?

Rev. Brewton: It's amendable; yes, sir.

The Court: How is it amended?

Rev. Brewton: By two-thirds majority of the, I believe, of the Presbyteries—I'm not sure exactly of the details there but it is amendable; yes, sir. You can amend the Book of Church Order according to constitutional means. I will say that. Now, of course, this is an opinion still.

The Court: Well, I am kind of interested in, for instance, ordaining females. Could the Book of Church Order be amended to provide—

Rev. Brewton: Yes, sir—

The Court: —that women be ordained as—

Rev. Brewton: Well, could I finish answering the question about the Constitution? The Book of Church Order, the Confession of Faith, The Larger Catechism, The Shorter Catechism, and the Directory for Worship: those five documents comprise the Constitution of the [166] Presbyterian Church in the United States. Now, the Book of Church Order, as well as the Confession of Faith, is amendable.

The Court: By whom?

Rev. Brewton: By the General Assembly, the highest judicatory of the church.

The Court: Who composes the General Assembly?

Rev. Brewton: Representatives from the individual Presbyteries.

The Court: Was your church represented at any of these meetings that you're talking about?

Rev. Brewton: My church, being a member of the Savannah Presbytery, was represented. We, in the Savannah Presbytery, this thing came up for our discussion. We were allowed to debate the matter of ordination of women elders and preachers, and if the gentlemen who were there at that meeting will remember, you will note that I was one of the ministers who was strongly opposed to this—opposed to the amendment to the Constitution on the grounds that it violated the Bible. Now, in the Presbyterian Church your supreme authority is the Holy Bible.

TESTIMONY

Partial Testimony of Reverend Clifford Brewton

* * *

[147] *Rev. Brewton:* I would like to start here with a paragraph—I will read two complete paragraphs if you don't mind, two complete paragraphs and it will be about a complete page out of the book. "During the centuries people have [148] used various methods of trying to get their problems solved: revolution, insurrection, immigration, strikes, shutdowns, sit-ins, picket lines. Each of these has had varied success in achieving results that were looked for. The phrase civil disobedience is something Gandhi has brought into our English language, and he says he got the idea from Jesus and the Sermon on the Mount. Today's reference to Luke 20 is of importance here. Jesus tells his questioner to give to Caesar the things that are Caesar's, but to God the things that are God's. This not only means that I pay my legitimate taxes to Caesar, and go to church on Sunday and put something into the offering plate for God. It is not quite as simple as that. It may also mean that I withhold from Caesar what Caesar thinks is his, but what really belongs to God! The disciples ignored established customs when they walked through the cornfields, plucked some corn and ate it; this was threshing in the judgment of the scribes, and was prohibited. Jesus violated the code of the Pharisees when he healed people on the Sabbath for the law at that time prohibited this. To help a sick man takes priority over the Sabbath laws; a moral law takes precedence over a civil law. You do not start a revolution; you do not bring in tanks and set machine guns up in front of the mayor's residence to shoot him when he comes out. You quietly make your protest known, persistently you make it known. When asked about it you give your morally justifiable rea-

sons for doing what you do. You appeal to God and his righteousness rather than to the laws of the land. And you keep at it until the laws [149] of the land are changed to conform to what you believe is right. And if the law says you may not picket or gather peaceably for purposes of protest, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the consequences." There's some more, but I won't read it out of that one.

Mr. Cowan: Lesson for older (indicating)—

Rev. Brewton: This is the—Quarterly for Older Youth that we quoted from, Mr. Cowan, and the other one is the Earnest Worker, resource study guide for teachers.

Mr. Cowan: And this is Plaintiff's Exhibit 15.

Mr. Cheatham: If you will, identify the page and everything.

Rev. Brewton: We are reading now from page 96 and 97 from the Earnest Worker dated April, May and June, 1964, A guide for Church School Teachers and Leaders. "It may seem strange that Jesus did not tangle with the Roman government until he stood before Pilate and Herod. We have no record of him advocating civil disobedience; rather, he advocated paying taxes to Caesar, and said that if a hated Roman solider forced them to carry his pack for a mile, they should go him one better and carry it two miles! It seemed that Jesus did nothing to increase the bitterness of the Jewish people in the presence of a cruel occupation government. Paul reflects this in what he says in Romans 13. This was basic: Christian people must obey the government under which they live, because the government is ultimately instituted by God for man's good. But there was more. God was to get his due, too. [150] Caesar might get his tax money; but God was to get what was his. In Matthew 6:33 Jesus said that we ought to seek first God's Kingdom and his righteousness. To be sure,

Jesus said this in a framework of a discussion on anxiety, but the demand is equally strong when you take it out of that context. Jesus agreed that God had priority over everything and everyone else. This means that there are times when the civil authority (or church authority, for that matter) must be disobeyed." Now, ladies and gentlemen, and Your Honor, I could read more from here. I could read the last paragraph and I won't take time to read the whole—if you want me to I will read the whole Chapter.

Mr. Cowan: Just read the last paragraph.

Rev. Brewton: All right. "The last two Scripture passages to be studied by your class point out possible areas of conflict between obedience to government (a man-made structure) and obedience to God. Two points should be made here:" Now, this is a summary. "We must at all times be aware of the danger that a government may do or ask an individual to do something which conflicts with one's obedience to God." And number two, "When such a situation arises it should be made clear that a Christian should try to change such a situation without violence of the law. But, if such attempts fail, civil disobedience may be called for. A Christian is first of all called to give ultimate allegiance to God, not government." Now, it is these two books, study materials and the Quarterly for Older Youth, the Earnest Worker, to be used as a guide for teachers in the [151] Sunday School of the Presbyterian Church, U. S., plainly, as you have heard, advocated disobedience to civil law under certain circumstances.

* * *

[154] *Mr. Cowan:* Read from page 160 of the Minutes of '65, please, sir; the General Assembly's pronouncement on civil disobedience.

Rev. Brewton: 1965?

Mr. Cowan: Yes, sir. One sixty.

Rev. Brewton: "This brings us to the problem of civil disobedience: the open, non-violent and conscientious refusal to obey a law or laws, as a means of appeal to a higher law, combined with the willing acceptance of the penalty. It is an extreme demonstration of dissatisfaction with some aspect of society. It also presents in its purest form the problem of the relation of the Christian to the state. Paul, and the Confession of Faith as well, affirm that governments are instituted by God and should therefore be obeyed. However, the civil magistrates are also bound under their charge: "to protect the person and good name of all their people in such an effectual manner as that no persons be suffered, either upon pretense of religion or infidelity, to offer any indignity, violence, abuse or injury to any other person whatsoever." "(Westminster Confession, Chapter 25, paragraph 3.) It needs no elaboration that within the province of our church, we have often kept silent, though men, because of race, have suffered 'indignity, violence, abuse, and injury.' It is true that within our system of government, means are provided, through the law, to present and adjudicate grievances for such injustices. Yet, when due course of civil law is denied or abridged, the Christian, for whom 'God alone is Lord of conscience.' may validly appeal to the Higher Law, led by the inner [155] witness of the Holy Spirit, speaking in and through the scriptures. This great ordering Word may lead him against the world, against the establishment of the civil magistrates. But he should be very cautious about taking such a lonely position and should hold it only in fear and trembling. If it leads him into civil disobedience he should not try to justify his position before men. He has violated the law, the public standard of justice, and hence must recognize his liability to the judgment of the civil court. The church exists to unite men by God's grace with themselves, with

God, and with their fellows—to make them whole. Therefore, it should give the support of Christian compassion to any member who, following his conscience in obedience to the Word, engages in civil disobedience. The methods of achieving justice which have been delineated here, while accomplishing in varying measures this end, cannot, in fact, bring to fruition our desire for unity in the bond of peace. Therefore, we as Christians are called upon to look beyond these methods to work toward the reconciliation of all parties involved by encouraging dialogue in the spirit of Christian love."

* * *

[156] *Rev. Brewton*: All right; be happy to read the whole thing. I'm reading here from page 90 and 91 out of the Minutes of the General Assembly, the Presbyterian Church in the United States, the highest church tribunal of the Presbyterian Church, U. S. "The Assembly notes—" well, first of all we start back here; starts with Overture Number 4: "For Overtures 33, 57, 60, 67, all seeking Assembly action on the 1965 Assembly's declaration on Civil Disobedience—" the one that I just read for you—we answer as follows: "We affirm (sic) the spirit and intent of the 1965 General Assembly statement concerning Civil Disobedience—" that's the one I read over there. "The Assembly declares—" no, wait—"—and offer the following paper as clarification of that spirit and [157] intent. The Assembly notes the unrest and disturbance within parts of the church resulting from the widely varying interpretations of its declaration on Civil Disobedience. The Assembly declares its understanding of this matter in the following paragraphs. The Presbyterian Church, U. S. affirms its belief in a society governed by the rule of law, arrived at through processes resting upon the consent of the governed. We fully (sic) affirm our confidence in and support of the presently con-

The Court: Who interprets that? Who interprets the Bible?

Rev. Brewton: The—

The Court: Isn't it a matter of individual interpretation?

Rev. Brewton: The Confession of Faith says that synods and councils since apostolic times have [167] erred and do err and are not to be made the rule of faith and practice, and in that respect they—they point to the Holy Scriptures. But at the same time, Your Honor, they state that the deliberations and the decrees of the General Assembly are to be received with reverence and submission, and when a Constitution of the Presbyterian Church is changed, even if it violates the Bible, which is the supreme document, then you are duty bound to either follow that and remain true to the constitutional form of government or if you believe that this is a violation of God's holy word then you have no other alternative but to remove yourself from that jurisdiction. There is no—no provision—there is no provision—

Mr. Cheatham: I am going to object to that statement unless he can show it in writing—

The Court: Well, he may be going just a little beyond the question that I asked him. I was merely—

Rev. Brewton: But you can amend the Book of Church Order and it was amended and it did include male—women as well as men for ordination.

The Court: And in that proceeding where that was done, as I understand it, your church, or your congregation was represented? They might not have agreed but you were represented.

Rev. Brewton: We were represented.

The Court: They were represented?

[168] *The Witness*: We were represented.

The Court: All right.

* * *

[171] *Rev. Brewton:* 1961, Minutes of the General Assembly—you must realize that keeping track of all of this is pretty difficult. The statement in part reads from the Minutes of the General Assembly, 1961, page 139.

Mr. Cheatham: I don't mean to interrupt, but if you have it here, read it from the book. I assume you have it.

Rev. Brewton: I have a photostatic copy, a zerox copy of the page.

Mr. Cheatham: For the time being go ahead and read that and let's see if they can find the original.

Mr. Cowan: You can read that. Go ahead.

[172] *Rev. Brewton:* "The General Assembly declare that in its judgement the doctrine of foreordination to everlasting death as formulated in the Confession is not an adequate statement of Christian faith, because it implies, regardless of the intention of the authors, an eternal negative decree; and that the doctrine, as stated in the Confession, is not essential to Reformed theology as is indicated by its absence in this vigorous form in such authentic Reformed creeds as The Scots Confession in 1560, the Second Halvetic Confession, and the Heidelberg Catechism." Reading from the Minutes of the General Assembly, page 139, paragraph 2 of a Report submitted by John R. (sic) Leith, J. Rodman Williams, Shirley Guthrie and Harry Goodykoontz—or something.

Mr. Cowan: Reverend Brewton, has the Church made pronouncements and recommendations of giving support to removal of Bible Reading and prayer in public schools?

Rev. Brewton: Yes.

Mr. Cheatham: Here again now I'm going to object unless the documents are in evidence.

The Court: Well, he's looking for something.

Rev. Brewton: Minutes of the General Assembly, 1965 page 77. 1965—77. "The Overture Number 4 from the

Everglades Presbytery requesting endorsement of an amendment to the Constitution of the United States to allow voluntary Bible Reading and Prayer in Public Schools be answered as follows: Because it is unwise to give support to a constitutional amendment which has not been written or submitted either to Congress or to [173] the respective state for approval; and because the 104th General Assembly affirmed clearly the basic principles of our denomination in this matter, to wit, 'We hold that religious ceremonies may be held in public schools on a permissive, voluntary basis without violation of conscience. There is a valid distinction between the State's compelling its constituents to gather for a religious ceremony and the State's permitting those who have gathered to acknowledge a higher power and to make a blessing upon their corporate life in a way generally and prudently agreed upon by them.' That is a statement from the Minutes of the General Assembly, page 77, where they endorse the Supreme Court's decision concerning the removal of Bible—".

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[174] *Rev. Brewton*: The Minutes of the General Assembly, 1966, page 171, "Policy Statement on Viet Nam". "Adopted by the General Board of the National Council of Churches on December 3, 1965."

Mr. Cowan: Read that.

Rev. Brewton: "We confront with sorrow the profound and widespread war-suffering of the Vietnamese people both North and South and others who are involved in the conflict, including personnel in military and other forms of service and families of our own and other nations. The issues in the war and possible solutions are very complex and there are sincere differences among us. Some believe that the military effort should be continued and that unless the spread of communism by violent infiltration is checked by further military means, liberties

of not only South Viet Nam but of South East Asia are imperiled. In this view the war must go on until the military results bring the Viet Cong and North Vietnamese to the conference table. Others believe that: A continuance of the fighting will not facilitate negotiations and will not serve the cause of peace or justice or freedom; it will mean a rising toll of death and sorrow for the Vietnamese people and increasing disillusionment and division on all sides; there is the grave possibility that a prolonged war will escalate further and spread, thus jeopardizing all of mankind; the struggle, and especially the bombing of North Viet Nam may delay progress in improved relations with the Soviet Union and in agreements for arms control and disarmament; within the United [175] States we also see, as associated with all wars, depersonalization of life and increase in immorality. We hold that within the spectrum of their concern Christians can and do espouse one or the other of these views or still other views and should not have their integrity of conscience faulted because they do. We note with approval that: 1. The President of the United States on April 7, 1965, and on other dates since then has publicly committed the Administration to the principle of unconditional discussions leading to the negotiation of the cessation of hostilities and a peace settlement, has expressed readiness to utilize mediation efforts by United Nations members, and expecially by United Nations Secretary-General U Thant; and that he has proposed a billion dollar development fund for Southeast Asia. 2. The United States Armed Forces have sought to avoid bombing the population centers of North Viet Nam. 3. The Secretary General of the United Nations has indicated his readiness to use his good offices to bring about the cessation of hostilities. We believe that a solution of the problem in Viet Nam can be essentially advanced only when action is moved from the battlefield to the conference

table. We pray that this may be speedily accomplished. We would also remind our people that the application of the basic Christian ethic of love and reconciliation should be in our minds and wills as we try to find solutions to this problem. We therefore recommend that the United States, [176] in the interest of bringing peace and growing justice and freedom to the territories of Viet Nam, should now consider the following suggestions: 1. Continue to reaffirm and manifest its readiness for unconditional discussion and negotiation in such manner as will remove any uncertainty about official policy relating to the termination of military action. Such reaffirmation might be strategically expressed by the cessation of all bombing of North Viet Nam for a sufficient period to create more favorable circumstances for negotiations to begin and with a simultaneous effort to induce the North Viet Nam Government to stop sending military personnel and material into South Viet Nam. 2. Adhere strictly to the policy of avoiding the bombing of centers of population of Viet Nam. 3. Seek to alleviate the desperate plight of the non-combatants in South View Nam by increased efforts to prevent their becoming the victims of the hostilities. 4. Request the United Nations to begin negotiations wherever and whenever possible for a cease-fire agreement (including cessation of terrorist activities) under United Nations supervision, among the governments of the United States, of North and South Viet Nam and other interested parties, including representatives from the National Liberation Front; such negotiations are imperative and may be possible on the basis of the mutual interest of sparing the population further and frightful suffering. Request the United [177] Nations, further, as soon as may be possible, to convene a peace conference regarding Viet Nam, with participation of all interested governments and with representation for the National Liberation Front to explore the

bases of a settlement of the long-term issues and the means to give such a settlement effective international guarantees.

5. Make clear that a primary objective of a settlement of the Viet Nam conflict is the independence of South Viet Nam from outside interference, with complete liberty to determine the character of its future government by the result of a peaceful, free and verified choice of its people. The choices might include whether it wishes to establish a coalition of Nationalists and National Liberation Front, or whether it wishes to be united with North Viet Nam (perhaps through a plebiscite), or to operate as an independent, neutral and non-aligned state, or whether it wishes to constitute with Cambodia and Laos a buffer-zone between the communist and non-communist spheres of influence, freely trading with both, or whether it wishes to join the Southern Asia Treaty Organization or the free states of South East Asia or elsewhere.—"

The Court: Reverend, may I interrupt you just a moment? One of the issues we have for determination is whether there has been a deviation—faith and doctrine—Westminster Confession of Faith. Is it your contention that that violates—could you refer me to the provision of the Confession of Faith or the [178] Book of Church Order that that violates?

Rev. Brewton: Chapter 33, paragraph four of the Confession of Faith of the Presbyterian Church of the United States—this card here—now, you heard me read that section from the North Viet Nam statement. This is a policy statement, a policy statement on Viet Nam.

The Court: Then it's your contention that it's intermeddling with the civil authorities. Is that right?

Rev. Brewton: Well, you asked me—I will tell you. In my opinion, it is.

* * *

[188] *Mr. Cheatham:* All right, sir. Now, will you get your Book of Church Order and turn to page 82? I want you to [189] read to the jury 30-1 and 30-2 which shows how the Book of Church Order and the Confession of Faith may be amended.

Rev. Brewton: "Amendments to the Book of Church Order may be made only in the following manner: (1) The approval of the proposed amendment by the General Assembly and its recommendation to the Presbyteries. (2) The advice and consent of a majority of the Presbyteries. (3) The approval and enactment of a subsequent meeting of the General Assembly. And 30-2; Amendments to the Confession of Faith and Catechisms of this Church may be made only in the following manner: (1) The approval of the proposed amendment by the General Assembly and its recommendation to the Presbyteries. (2) The advice and consent of three-fourths of the Presbyteries. (3) The approval and enactment by a subsequent meeting of the General Assembly. These provisions can be amended only by the same method as they prescribe for the amendment of the Confession of Faith and the Catechisms of this Church."

Mr. Cheatham: So this sets out the exact procedure that must be followed—in the Book of Church Order and the Confession of Faith?

Rev. Brewton: Yes.

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Partial Testimony of Dr. Akin Taylor

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[198] *Mr. Page:* Would you please describe or delineate the general jurisdictional area of the Presbyterian Church in the United States, or the southern branch?

Dr. Taylor: Well, our general jurisdictional area is limited to the southern states although there are a handful of congregations outside that geographic area in states

of New Mexico, Ohio and—I believe they are all in New Mexico and Ohio, additional congregations.

Mr. Page: Doctor, you mentioned a schism of 1861. Will you briefly tell the Jury what precipitated this schism and what then developed within the Presbyterian Church?

Dr. Taylor: 1861. Well, the—at the time of the Civil War the Presbyterian Church was already divided. A doctrinal dispute had separated the two branches into two sections, both north and south, I mean both of the [199] sections were north and south. Then after the Civil War was precipitated the question of political allegiance came into the top Court of the Church and whether or not the Christian in conscience should swear allegiance to the Federal government as a part of his church membership responsibilities. And the southern representatives of one of these two divisions withdrew and constituted later the Presbyterian Church in the Confederate States of America. They then united with the southern half of the other group which had separated about four years, three years previously.

Mr. Page: Now, on what level did this renunciation of division take place in 1861, or thereabouts? What level of adjudicatory did it take place?

Dr. Taylor: Well, the representatives of the General Assembly withdrew during the meeting of the General Assembly, but—in 1861, withdrew from the General Assembly. During the next year individual Presbyteries and individual Congregations declared themselves independent or severed from the parent Presbyterian body at the particular level involved. Individual Presbyteries declared themselves independent and separated. Individual congregations declared themselves independent and separated—leaving in effect, a totally unconnected or disconnected group of Presbyteries and congregations. Representatives of these came together in a sort of a preliminary conven-

tion to decide if they wanted to come together and organize a Church, but at the time they were separate and independent, having separated from the northern church and they came together for the purposes of organizing a church in Augusta, Georgia about the year—about a year, not quite a year—it was in December—after [200] the meeting of the General Assembly from which their representatives had separated eight months before.

Mr. Page: When those—when those congregations left at this particular time, did they take their property with them?

Dr. Taylor: Yes, sir

Mr. Page: When the Presbyteries left at that time, if they were vested with any property, did they take the property with them?

Dr. Taylor: Yes, sir.

Mr. Page: When the Synod left at that time if they were vested with any property, did they take that with them at that time?

Dr. Taylor: Yes, sir.

Mr. Page: Was there ever any attempt by the Presbyterian Church from which this group had severed themselves, subsequent to this action, either during the hostilities or after the termination of the War Between the States, to re-take any of these properties?

Dr. Taylor: Not any of the properties involved in the original assembly which constituted the Confederate Church.

Mr. Page: As I recall, a property incident arose involving some Synods within the entire Church body prior to 1861; some schism of 1839. Are you familiar with this, sir?

Dr. Taylor: 1836.

Mr. Page: 1836. I beg your pardon; 1836.

Dr. Taylor: In 1836 the division occurred between what was known as the old school—

Mr. Cheatham: No, I am going to object to this question. It definitely calls for hearsay—

[201] *Mr. Page*: Well, now—now, I'm going to get to it.

Mr. Cheatham: Well, then, let's get to it first—so I'll know what you are talking about.

Mr. Page: This has already been entered by stipulation. It's a copy of Beard's Digest, page 800.

Mr. Page: Doctor, will you look at this copy? We'll mark it plaintiffs'—Joint Exhibit, Eastern Heights and Hull. This has been entered as evidence by agreement of counsel.

Dr. Taylor: You want me to describe, that—?

Mr. Page: Yes. If you will, read the pertinent section from it and then describe—then give the historical background on it.

Dr. Taylor: Read it first before I describe the background?

Mr. Page: I think you'd better read the pertinent section if you will, please, as applies to this schism or division and then if you will explain the historical background.

Dr. Taylor: This body—this is the General Assembly of the old school, one of the two halves of the 1936—1836 split, speaking: "This body considers itself and the Church at large bound, as both have been not only willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner. This is especially the case touching any claims which may exist on the part of the four Synods of Utica, Geneva, Genesee, or the Western [202] Reserve which were declared in 1837 to be no part of the Presbyterian Church, or on the part of those who seceded from the Church in 1838, or on the part of any body constituted out of the whole or any part of these elements. And that, in regard to all and each of these bodies and persons, the Assembly will faithfully adhere to

any pledge or promise, express or implied, which it can justly be construed ever to have made, and will fulfill every expectation which it ever knowingly allowed to be cherished."

* * *

[204] *Mr. Page:* Now, would you read . . . just from that part of the Resolution which applied to Synods which were removed?

Dr. Taylor: . Well, it says this especially touches the claims of property of these four Synods.

Mr. Page: All right. Go ahead.

Dr. Taylor: "This body considers itself and the Church at large bound, as both have not only been willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner."

Mr. Page: All right. Following that Resolution, what action then happened regarding the four—the Synods that were kicked out?

Dr. Taylor: The property that they claimed was given to them. The General Assembly relinquished claims upon any property that might have belonged to these groups that separated.

Mr. Page: Thank you very much. Now, Doctor, coming a little more current in our historical presentation let me—would you give me the Minutes of 1967, please, and 1875 of the General Assembly? . . . . Doctor, I hand to you two books which are one, the Minutes of the [205] General Assembly of the Presbyterian Church of 1867 which will be marked Exhibit of the plaintiff—these have been agreed to by stipulation, gentlemen of the Jury. Also the Minute Book of the General Assembly of 1875—

Mr. Cheatham: Let me have the pages.

Mr. Page: Referring to these two documents, Doctor Taylor, would you—

Mr. Cheatham: Excuse me, Mr. Page. When you come back will you bring me that Resolution of 1830 something—that—introduced—

Mr. Page: Yes.

Mr. Page: Do you have the—

Dr. Taylor: 1867; yes, sir.

Mr. Page: Would you read for the Jury the reference in the Minutes of 1867, please?

Dr. Taylor: Well, there is a portion of a long document which would read as follows: "This Assembly cordially approves the determination of the Synod of Kentucky to assert fully all of its legal claims as a part of the Presbyterian Church of the United States of America and to reserve all its legal rights of property as a Synod in any union which may be formed with this Body."

Mr. Page: All right. Now, this Resolution or did this Resolution follow the . . . formation of the Presbyterian Church of the Confederate States on or about 1861, sir?

Dr. Taylor: I beg pardon, sir. Now—how did you connect that?

Mr. Page: This Resolution or the reference that you just read from, was it adopted subsequent to the formation [206] of the Confederate or Presbyterian Church of the Confederate States, that you just made reference to?

Dr. Taylor: Yes, sir; this was about seven years later—six years later.

Mr. Page: Was the Presbyterian Church of the Confederate States a fore-runner of the, what is known as the Presbyterian Church in the United States, south?

Dr. Taylor: Yes, sir.

Mr. Page: Now, would you explain, please, Doctor, the significance of that . . . minutes that you just read from?

Dr. Taylor: After the Civil War, the Synod of Kentucky separated from the Northern Presbyterian Church.

It didn't separate until after the—it stayed as a part of the Northern Presbyterian Church until after the Civil War, but after the Civil War the Northern Presbyterian Church continued a spirit which the Kentuckians considered to be vindictive with respect to the Southern Church and the Synod of Kentucky after the Civil War reacted against the spirit of vindictiveness on the part of the Northern Church, withdrew from it and applied for membership [207] to the Southern Church, and in their application to the Southern Church they asked the Southern Church what would be their property rights if they should come in, and the paragraph that I have read is the paragraph of the General Assembly speaking to the Synod of Kentucky telling them what their property rights would be should they come into the Southern Church.

Mr. Page: And read again, what did they say in that communication to the Kentucky Synod if you come in what will—"what claim, if any, will we have on your property."

Dr. Taylor: "The Assembly cordially approves the determination of the Synod of Kentucky to assert fully all of its legal claims as a part of the Presbyterian Church of the United States of America and to reserve all its legal rights of property as a Synod in any union which may be formed with this Body."

Mr. Page: Now, when it left—this Synod, left the Presbyterian Church of the U. S. A., do you recall whether there was any attempt to take that property from them?

Dr. Taylor: Yes. Now, when—when the Synod of Kentucky suffered its various divisions there was rather general [208] litigation.

Mr. Page: Was one of the—one of those—was one of the cases that resulted in that litigation identified as what is known as Walnut Street Church?

Dr. Taylor: Yes; one of these was the Walnut Street Church of Louisville, Kentucky, the third Presbyterian Church of Louisville, Kentucky

Mr. Page: Has this become quite, shall we say, illustrious in this type of litigation and is it now known as Watson versus Jones?

Dr. Taylor: Yes. The case of the Walnut Street Church in Louisville at the time of the separation of the Synod of Kentucky has become, more or less, the—I don't know—the, the grand-daddy case in matters of property litigation between, between churches.

Mr. Page: Now, Doctor, what has historically been the attitude of the Presbyterian Church in the United States, let's say in the year 1875, toward the decision of Watson versus Jones?

Mr. Cheatham: That's calling for—

Mr. Page: Well, we're going to introduce—I am going to introduce the minutes of the General Assembly.

Mr. Cheatham: Well, that should be done first.

Mr. Page: Will you please refer to the minutes of the General [209] Assembly of 1875 which records the case of Watson versus Jones?

Dr. Taylor: Well, it doesn't record the case of Watson versus Jones. It comments on it.

Mr. Page: Well, comments—I beg your pardon. Comments on the Walnut Street case.

Dr. Taylor: This is in 1875.

Mr. Page: All right, sir. Would you please read that?

Mr. Cheatham: Will you give the page and all that, please, sir?

Dr. Taylor: Minutes of 1875, page 88. This is Presbyterian Church, U. S. South.

Mr. Page: That's correct. These have been introduced—by stipulation, they are in evidence. You may proceed to read.

Dr. Taylor: "And now, without entering into a discussion concerning the decision of the Supreme Court of the United States, in the case of the Walnut Street Church, Louisville, Kentucky, or how far the action of the General Assembly (North) of 1872, in approving the principles there laid down, was inconsistent with the action of both the Old and New School Assemblies in approving precisely the opposite principle laid down by the courts of Pennsylvania, in the controversy of 1837 and 1839, we here propose that this whole matter shall be [210] submitted to arbitration on the principles presented in the paper adopted by the Old School Assembly of 1839, and of which, for convenient reference, as well as general information, a copy is here given, as follows—" and then follows a quotation from 1839.

Mr. Page: All right. Well, let's—just so the Jury keeps this in proper . . . let's go back and quote from 1839, which is a part of those minutes, so that they will understand what is being done by the General Assembly in 1875 with regard to property rights.

Dr. Taylor: This is the one that we just read a few minutes ago in division between Old and New School. "That this body considers itself and the Church at large bound, as both have been not only willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner." That's all.

Mr. Page: By that action of the General Assembly of 1875, did it, in effect, reject Watson versus Jones?

Mr. Cheatham: Well, now that's calling for an opinion.

The Court: I will sustain your objection.

Mr. Page: Subsequent to 1875, has the Presbyterian Church in the United States ever specifically revoked the [211] finding on Watson versus Jones as identified in the Minutes of 1875?

Dr. Taylor: The Presbyterian Church has not, by name, mentioned Watson versus Jones in any Minute except this one. The Presbyterian Church in the U. S. has taken frequent action with respect to property rights. Actions that have been taken with respect to property rights have in themselves constituted a non-recognition of Watson versus Jones.

Mr. Cheatham: Well, I again object . . . opinion.

The Court: I sustain your objection. Just disregard that.

Mr. Page: Well, however, did they ever specifically—did they ever—has any action of the Presbyterian Church . . . the General Assembly specifically by exact terms and words rejected or revoked or reversed that Minute of 1875?

* * *

[212] *Mr. Cheatham*: They are all over the place.

Mr. Page: Would you look at Section 6 dash 3, please? Would you read from it, reference in The Book of Church Order adopted by the General Assembly of the Presbyterian Church relative to property rights?

Dr. Taylor: "6-3. If a church is dissolved by the Presbytery, [213] or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church; and the receipt and acquittance of the Presbytery, or its proper representatives, shall be a full and complete discharge of all liabilities of such persons holding the property of the church. The Presbytery receiving such property shall apply the same or the proceeds thereof at its discretion."

* * *

[213] *Dr. Taylor*: "If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members on the active roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title 'Trustee' or some [214] other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board of Deacons. All funds collected for the support and expense of the church and for the benevolent purposes of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and bylaws of the corporation any or all of the following responsibilities: The buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling, and mortgaging real property such officers shall act solely under the authority of the corporation, granted [215] in a duly constituted meeting of the corporation."

* * *

[219] *Dr. Taylor*: Well, in 1875 there were committees of the Assembly of the Northern Presbyterian Church and committees of the Assembly of the Southern Presbyterian Church, that were in correspondence with a view, a pos-

sible view to re-establishing cordial or friendly relations between the two churches after the Civil War.

Mr. Page: Let me interrupt: what two churches were those?

Dr. Taylor: The Northern Presbyterian Church or the Presbyterian Church in the United States of America and the Southern Presbyterian Church or the Presbyterian Church in the United States.

Mr. Page: All right, sir. Will you please continue with your explanation?

Dr. Taylor: And the—the two—the committees in negotiation between the two churches were seeking to establish relations between the two churches and the Southern Church was listing—the Southern Church was listing the reasons why it felt that impediments still existed to relations between the two churches, and one of the [220] impediments was the difference between the two churches in the matter of church property, in the philosophy of church property in the paragraph that was read yesterday from the Minutes.

Mr. Page: All right. Excuse me. Would you re-read that paragraph so that we can particularly identify for the jury the difference—the difference in the philosophies between the two churches, that is the Presbyterian Church, U. S. A. North, and the Presbyterian Church, U. S. South?

Dr. Taylor: I beg your pardon. It's the Minutes of 1875. I beg your pardon. This is a preliminary statement: "We now proceed to notice the second general cause preventing fraternal relations, namely: The course pursued in regard to Church property." And then this is the paragraph. "Without entering into a discussion, concerning the decision of the Supreme Court of the United States, in the case of the Walnut Street Church, Louisville, Kentucky, or how far the action of the General Assembly (North) of 1875 (sic), in approving the principles there laid down, was

inconsistent with the action of both the Old and New School Assemblies in approving precisely the opposite principle laid down by the courts of Pennsylvania, in [221] the controversy of 1837 and 1839, we here propose that this whole matter shall be submitted to arbitration on the principles presented in the paper adopted by the Old School Assembly of 1839, and of which, for convenient reference, as well as general information, a copy is here given, as follows:—"

Mr. Page: All right. Now, with that being the basis of the impediment or impairment between the re-affiliation, what then happened?

Dr. Taylor: Well, there were no resumption—at that time there were no resumption of fraternal relations between the two churches.

Mr. Page: Was that because of the difference in the philosophy of—regard to church property—between the two churches?

Dr. Taylor: This was one of the reasons.

Mr. Page: And what—and what, specifically, did this resolution that you've just quoted from, how was its philosophy expressing the U. S. Church South different from that of the U. S. A. Church North?

Dr. Taylor: Well, the U. S. A. Church North recognized the denominational claim over congregational property. The U. S. Church South did not recognize denominational [222] claim over property of a local congregation.

* * *

[225] *Dr. Taylor*: Well, the one we've just talked about was 1875. 1867 the General Assembly was in correspondence with the Synod of Kentucky which was writing to ask if it could be received into the Southern Presbyterian Church. The Synod of Kentucky was asking if its [226] philosophy of church property would be recognized by the Southern Church upon reception. The Southern Church

in its reply stated that it would—in the reply that was read—stated that it would recognize the Synod's ownership of its property and make no claims upon it upon reception into the Southern Church.

Mr. Page: What—was that action by the General Assembly of the Presbyterian Church, U. S. South?

Dr. Taylor: Yes.

Mr. Page: Now, Doctor, turning—we've covered the overture of the General Assembly 1949. Will you please refer to the Minutes of the General Assembly of 1951? . . . I hand you the Minutes of the General Assembly of the—of the General Assembly of the Presbyterian Church for the year 1951. These have been stipulated to be admitted in evidence by counsel. I also hand you the Minutes of 1953. Before we go into those Minutes, Doctor, do you happen to know of your own knowledge the, what we would call the legal citation of the case of Watson versus Jones, just for the record?

Dr. Taylor: I believe it's in the—

The Court: I think we can agree on—

[227] *Mr. Page*: I would be delighted to have it read to the jury.

Dr. Taylor: I have it written.

The Court: All right. Go ahead.

Dr. Taylor: It's in the United States Supreme Court Reporter, Law Edition 20.

Mr. Page: What page?

Dr. Taylor: Page 666.

* * *

[227] *Dr. Taylor*: This is a report which was adopted by the General Assembly: "As a result of our study and deliberation, we submit to the General Assembly the following five statements—" "Number 1. The legal title to property of a particular church is in its trustees on behalf

of that congregation. Therefore, the property is actually controlled by that congregation. This is recognized by both Civil and [228] Ecclesiastical courts. The right to hold and dispose of property is granted by the State. Number 2. A voluntary religious society which constitutes a part of a religious organization or denomination, having established tribunals authorized to decide questions of faith, discipline, rule, or ecclesiastical government, is bound by decisions of such tribunals in such questions. 3. In such cases where a right of property asserted in a civil court is dependent solely on a question of doctrinal discipline, ecclesiastical law, rule, or church government and that question has been decided by the highest tribunal within the organization, the civil courts will ordinarily accept that decision. 4. Where property is acquired by a particular church, by purchase or otherwise, for the use of such church, it will be a matter for the civil courts to determine who constitute such church or its legitimate successors. 5. If trustees or members of a particular church undertake to withdraw and attempt to take their church property with them, it may subject all questions of ownership and control to a decision by the civil courts."

* * *

[234] *Mr. Page*: What effect then did this action have—the removal of the—declaring the pastorate vacant—what was then the status of the congregation?

Dr. Taylor: Well, the paper states that individual Elders are removed and then it states since there is no Session—there is nothing in here which states that the Session was dissolved. As a matter of fact the paper states that one Elder is left in each congregation. There is nothing in the paper which goes on and takes action upon a congregation.

Mr. Page: What then was—what was the status of the congregation after the adoption of this Resolution?

Dr. Taylor: Well, the Administrative Commission stated that it would endeavor to continue supplying pastoral or ministerial oversight to the congregation.

Mr. Page: Did the effect of this Resolution, which you have just read, have—rather, did it have the effect of identifying the congregation as continuing?

[235] *Dr. Taylor:* This is an opinion.

Mr. Cheatham: I am going to object—

The Court: I sustain your objection.

Mr. Page: Was there any reference in the Resolution to dissolving the congregation or the church?

Dr. Taylor: No.

* * *

[241] *Mr. Page:* Yes. Doctor, is there any provision in the Book of Church Order of the Presbyterian Church in the United States, which provides for a Presbytery to hold property?

Dr. Taylor: Yes. A Presbytery can hold—you mean congregational property or—

Mr. Page: I mean congregational property.

Dr. Taylor: A presbytery can hold congregational property in the absence or non-existence of a congregation—if a congregation has ceased to exist, no longer exists, or for example, throughout rural areas sometimes there will be congregations or churches standing and the membership has moved elsewhere—there may be just one living member and he's off somewhere else. When the congregation ceases to—this is the only paragraph in the Book of Church Order with respect to property and we read it yesterday. When the church ceases to exist the Presbytery may take possession of this property.

Mr. Page: That is in the extinction of the congregation, so to speak?

Dr. Taylor: That's correct.

Mr. Page: Is there any—any other provision for a Presbytery [242] holding property where a congregation is in existence? A. No. There is no provision for a Presbytery to take. . . .

* * *

[244] *Mr. Page:* Doctor, relative to the matter of the ordination of women Elders and—would you tell the jury how this came about and also would you give the jury the historical position of the church in regard to this, this matter?

Dr. Taylor: Well, our denomination has always had the very highest respect and regard for its women members. As a matter of fact in a great many congregations the majority leadership is in its women and our denomination has never taken any action to demean in any way or to diminish in any way the respect and regard that it has for its ladies, shall I say. Denominations for most of its history, limited [245] the particular holding of the office of the ministry and of the eldership to the men of the denomination. The first time that an effort was made to change this policy with respect to office holding—and I don't think this has anything to do with opinion of qualifications of ladies, but the propriety of the office was in the 19th century and frequent overtures went to the General Assembly which were repeatedly defeated and in the last ten years overtures were approved by the General Assembly and then defeated by the Presbytery on very close votes, increasingly close votes. Finally in 1963—within a year or two, 1963, the General Assembly approved and the Presbyteries ratified the change in the constitution that would permit the ordination of women to ministry and to the eldership.

* * *

[258] *Mr. Cheatham:* That's what I wanted to bring out. Now, let's—it may be still a little bit confusing to the jury, not being Presbyterian—and it was for me, I will have to admit, for sometime, about the judicial structure of the Presbyterian Church. Will you quickly run through that again, starting at the lowest echelon which is the church Session, the local church.

Dr. Taylor: Well, these bodies are called courts for the reason that they are in some respects are true tribunals with authority to decide questions. The local court is the Session, composed of the Elders of the local church. The next Court which is the primary court of jurisdiction over local churches is the Presbytery.

Mr. Cheatham: Like in this case, the Savannah Presbytery?

Dr. Taylor: Savannah. There are four or five . . . . in each State, or six.

Mr. Cheatham: Go ahead.

[259] *Dr. Taylor:* This Presbytery is a court of original and primary jurisdiction over the local congregation and is the next court above the Session. Then there is a Synod which generally, with one exception, corresponds to the geography of the State, as the Synod of Georgia. And above that, the top court is called the General Assembly which has jurisdiction over all matters. The General Assembly is the only court that has authority to approach constitutional questions.

Mr. Cheatham: So that—

The Court: Let me ask you one question. Doctor Taylor, how many local congregations or local churches are there in the Savannah Presbytery? Do you know?

The Witness: I don't have that actual figure, sir. Actual Presbytery—

The Court: Well, when you speak of the Savannah Presbytery, you don't mean just the local churches in Savannah?

The Witness: No; about thirty—thirty-five—

Mr. Cheatham: Thirty-five, and they go down as far as Waycross, I believe, Fitzgerald and McRae and in surrounding counties.

The Witness: This is corresponded to a Diocese, I believe, or—roughly.

[260] *Mr. Cheatham*: And there are six Presbyterian—Presbyteries in Georgia—the State is divided into six parts. So, if any matter involving faith, or belief, or doctrine or decorum arises at the local church level and if there is dissatisfaction with the decision of the Session, there is a method of appealing, is that correct?

Dr. Taylor: That is correct.

Mr. Cheatham: First to the Presbytery?

Dr. Taylor: That's correct.

Mr. Cheatham: Then, if the losing party is not satisfied with the Presbytery's decision he can go to the Synod?

Dr. Taylor: Correct.

Mr. Cheatham: And then all the way on up to the General Assembly, just like . . . . Superior Court and cases can be appealed to the Supreme Court of Georgia?

Dr. Taylor: That's correct.

Mr. Cheatham: So in essence the Presbyterian Church has its own judicial system in some ways paralleling the civil appellate system?

Dr. Taylor: Correct.

Mr. Cheatham: Now, Doctor, we were talking about the amendment which I presume was done properly to allow women Elders and Ministers, I mean, was done within the rules [261] of Church Order. Nothing in that amendment is there, that forces a local congregation to elect a

lady as an Elder or a Minister if they don't want to do it, is there?

Dr. Taylor: A request came to the General Assembly two years ago asking if it was mandatory upon local congregations to place in nomination women for office and while the—the General Assembly replied that while it is not mandatory that local congregations elect women to office, it is mandatory that the privilege be accorded them to be placed in nomination.

Mr. Cheatham: Well, is there anything undemocratic about that?

Dr. Taylor: I have an opinion.

Mr. Cheatham: Go ahead and express it.

Dr. Taylor: I think it's perfectly democratic; yes, sir.

Mr. Cheatham: It follows the democratic procedure; if they want to elect a lady they can; if they don't, they don't have to. Is that correct? And if, under your procedure of nomination someone is nominated, a lady is nominated, then that's their privilege, isn't it?

Dr. Taylor: Well, you asked about mandatory. The privilege of nomination is mandatory. The election of them is not.

[262] *Mr. Cheatham*: Well, actually, I asked about election, but I'm glad you brought the whole thing out.

Mr. Cheatham: Thank you very much, Doctor.

* * *

Partial Testimony of L. R. Herman

[272] *Mr. Herman*: This is a Quarterly. It is for Older Youth. As I said before this is a Sunday School lesson that has been developed by the Presbyterian Church, U. S. to be used in their churches. The lesson is for May 24th, 1964; the same date as the lesson for [273] the adults. "Civil Disobedience. We are making history in our country and

as Christians we should be awake to that fact. The problems created by segregation or integration are not new; they are as old as the human race. In our country the problem is not new either, but in the past years we have all witnessed a new approach to that problem. For a century many have felt that the problem would solve itself as time went on; but we know now that hardly anything in human relations gets solved by itself. About some sickness in the body, or a broken leg, we rightly say; be patient and let nature take its course. But with human problems one can hardly say that; human nature is not dependable, and is quite as likely to go the wrong way as the right way. In fact, the Bible keeps on drumming away at the idea that it is more likely to go the wrong way than the right way. That is the first point we would like to make today; that good causes must be helped along, and we as Christians must not walk away from them. During the centuries people have used various methods of trying to get their problems solved; revolution, insurrection, immigration, strikes, shutdowns, sit-ins, [274] picket lines. Each of these has varied success in achieving results that were looked for. The phrase civil disobedience is something Gandhi has brought into our English language, and he says he got the idea from Jesus and the Sermon on the Mount. Today's reference to Luke 20 is of importance here. Jesus tells his questioner to give Caesar the things that are what —that are what Caesar thinks is his, but what really belongs to God. (sic) The disciples ignored established customs when they walked through the cornfields, plucked some corn and ate it; this was threshing in the judgment of the scribes, and was prohibited. Jesus violated the code of the Pharisees when he healed people on the Sabbath for the law at that time prohibited this. To help a sick man takes priority over the Sabbath laws; a moral law takes precedence over a civil law. You do not start a revolution;

you do not bring in tanks and set machines guns up in front of the mayor's residence to shoot him when he comes out. You quietly make your protest known, persistently you make it known. When asked about it you give your morally justifiable reasons for doing what you do. You appeal to God and his righteousness rather than [275] to the laws of the land. And you keep it until the laws of the land are changed to conform with what you believe is right. And if the law says you may not picket or gather peaceably for the purpose of protest, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the consequences."—"Taking the Consequences". This is the final part of the lesson for these young people in the Presbyterian churches, Sunday Schools. "There were some people in the early days of the church who were haled before the court because they would not sacrifice to the emporor. They believed emperor worship was idolatry, and that they could not affirm the Lordship of Christ and at the same time the lordship of the Emperor. Many Christians were martyred because of their stand in this matter. Peter says that they must not be surprised at that treatment, and they mustn't be ashamed of it. If they suffer because they have done wrong, that's what they can expect, and they shouldn't cry about it. But if they suffer for doing what was right and good, they must bear up under that too, and meanwhile commit their souls to a righteous Creator. This [276] is true today when anyone feels it his or her duty to engage in some form of protest as a matter of conscience. If the paddy wagon comes and takes you off to jail you will have to bear up under that experience. If you had done wrong it would be an indignity; but if you have not done wrong, then it need not embarrass you. I do not think a Christian should go out of his way in order to get arrested, seeking martyrdom so he can talk about it." This is a lesson pre-

sented, written and developed by the Presbyterian—this is a periodical prepared by the Presbyterian Church of the United States, 8 N. Sixth Street, Richmond, Virginia, and this is the Sunday School lesson for May 24th, 1964, developed for our young people and used in the church. We, at Hull Memorial Church have been unable to use this . . . because we believe that this is not according to the Confession of Faith of the Presbyterian Church.

Mr. Cowan: Is this material in conformity with the Confession of Faith?

Mr. Herman: In my—no, sir.

* * *

[291] *Cross-Examination by Mr. Cheatham*

Mr. Cheatham: Mr. Herman, at first you did not agree with some of the articles of the church literature so you cancelled your subscription; is that correct?

Mr. Herman: Yes, sir. We are now using Gospel Light publications which is a Presbyterian publication from Glendale, California.

Mr. Cheatham: The point is, you didn't like it so you stopped—

Mr. Herman: Yes, sir, we have the liberty to choose this.

Mr. Cheatham: That's exactly what I wanted to point out. Thank you very much.

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Partial Testimony of Mr. Frank L. Perry

[316] *Mr. Page*: Mr. Perry, has Eastern Heights Presbyterian Church or its Trustees ever received any money from the Presbytery or the Presbyterian Church in the United States to purchase either the property at 15-1507 37th Street, and Seiler Avenue property immediately to the rear of the church building?

Mr. Perry: Not one cent

Mr. Page: Has it ever received any money from the Presbytery or the Presbyterian Church in the United States to maintain, repair or pay any of the cost of expenses, not only for the two properties that you identified, the Seiler Street property and the church parsonage, but also on the church building?

[317] *Mr. Page*: How much is now owed, approximately, by the Eastern Heights Presbyterian Church and its Trustees on the church property?

Mr. Perry: I believe it's about eighty-five hundred dollars.

Mr. Page: Are all of the three properties mortgaged?

Mr. Perry: Yes, sir.

Mr. Page: In the payment off—in the payment off of the loan or paying off the loan, are you receiving or have you received any financial help from the Presbytery or the Presbyterian Church in the United States?

Mr. Perry: None whatsoever.

Mr. Page: Do either the Presbytery or the Presbyterian Church in the United States have one red penny or one thin dime invested in any of these properties?

Mr. Perry: No, sir.

* * *

[321] *Mr. Perry*: Before any business is transacted in a congregational meeting it is always determined by the congregation who shall vote and how they shall vote, and at this particular meeting it was recommended to the congregation by the Session that no members under thirteen years of age be permitted to vote and that was adopted by the congregation on this date.

Mr. Page: Was there any dissenting vote on that?

Mr. Perry: No, sir.

Mr. Page: Now, following the action determining who should vote, I hand you this Resolution—a photocopy—it's already in the pleadings—

Mr. Page: Would you mark that Plaintiff's Exhibit, Eastern Heights—?

Note: (Plaintiff's Exhibit, Eastern Heights, No. 15, Resolution, marked for identification.)

Mr. Page: This is already part of the pleadings and is being entered in evidence. I ask you—it's a photo-copy.

Note: (Plaintiff's Exhibit, Eastern Heights, No. 15, admitted in evidence.)

Mr. Page: Would you please identify that for me?

Mr. Perry: This is a Resolution adopted by the congregation of Eastern Heights Presbyterian Church on April the 17th.

Mr. Page: And where was it adopted—when was it adopted?

Mr. Perry: On April the 17th.

Mr. Page: And what was the vote on the adoption of that amendment?

Mr. Perry: One hundred and twenty-two against nothing.

Mr. Page: In other words, there was no dissenting vote?

Mr. Perry: No, sir.

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Partial Testimony of Mr. Clyde Pratt

[352] *Cross-Examination by Mr. Cowan*

Mr. Cowan: This will be very short—question I want to ask you, on cross-examination. Are you the Stated Clerk of the Savannah Presbytery?

Mr. Pratt: I am.

Mr. Cowan: And as the Stated Clerk you keep all records of the . . . of the Presbytery?

Mr. Pratt: I do.

Mr. Cowan: And you have access to all the records from the time the Presbytery was organized. Do you not?

Mr. Pratt: Either I do or they are in our historical foundation at . . .

Mr. Cowan: And you could get them if you want them?

[353] *Mr. Pratt:* Yes.

Mr. Cowan: Now, tell the jury, Mr. Pratt, from the records you have, the year 1890 up till the present time, has the Savannah Presbytery or the Presbyterian Church in the United States ever contributed one thin dime to Hull Memorial Presbyterian Church? One dime?

Mr. Pratt: I'm not prepared to answer that. I would have to—I didn't come prepared to answer that. I guess I could read the records and say "yes" or "no". I am unprepared to answer that question.

Mr. Cowan: Mr. Pratt, you answered it in the interrogatories we asked you, I think.

Mr. Pratt: What's that?

Mr. Cowan: I think you answered it in the interrogatories that we propounded to you.

Mr. Cheatham: The interrogatories were propounded to the defendant, and he is not a defendant.

Mr. Cowan: Mr. Pratt signed the paper.

The Court: Show him what you—

Mr. Cowan: Is this your signature, sir?

Mr. Pratt: I would call on the advice of the lawyer here to kind of help me out here. What is involved here?

Mr. Cheatham: Read what the interrogatory . . . states and we will put that in the record.

[354] *Mr. Cowan:* I'm asking him if this is his signature on these interrogatories?

Mr. Page: Oh, yes; it's my signature.

Mr. Cowan: And it's under oath?

Mr. Pratt: Yes, sir.

Mr. Cowan: Under oath and under the seal of a Notary. Is that right?

Mr. Cheatham: Give him the number you want him to—

Mr. Pratt: My question (sic) is as far as I know I have no record of it. Now, I—I couldn't swear whether we have or not. Now, if I have put my signature on something that I was supposed to swear to, I did it ignorantly.

Mr. Cheatham: . . . read the interrogatory and read the answer.

Mr. Cowan: I will.

Mr. Cowan: "Interrogatory Number 2. List all . . . whether Hull Memorial Church—Hull Memorial Presbyterian Church received directly or indirectly, financial support, gifts, loans, so forth from the Savannah Presbytery or the General Assembly of the Presbyterian Church in the United States. Attach copies of such actions or transactions." Your answer to 2: "such information is not available, nor is the same germane to the issues in the subject case [355] nor could it lead to admissible evidence. Interrogatory number 3. List all instances whether Savannah Presbytery and the Presbyterian Church in the United States contributed financially or otherwise in the purchase of any land now in the possession of or formerly in the possession of Mary Elizabeth Blue Hull Memorial Presbyterian Church." Your answer to number 3: "Records do not reveal that any contributions were made." Interrogatory number 4: "List all instances where the Savannah Presbytery and the Presbyterian Church in the United States through financial contributions or otherwise secured title in any manner, whatsoever, to any portion or all of any land now held or formerly held in possession of Mary Elizabeth Blue Hull Memorial Presbyterian Church." Your answer to number four, sir, "Records do not reveal that Savannah Presbytery and the Presbyterian Church of the United States has held title to the land in question." Interrogatory number 5: "List all instances where the Savannah Presbytery and the Presbyterian Church of the United States through financial contributions or otherwise,

contributed in the construction of any buildings of any kind now or formerly located on real property now or [356] formerly in possession of the Mary Elizabeth Blue Hull Memorial Church." Your answer to number 6: "Records do not reveal that such contributions were made." Interrogatory number 6: "List all instances where the Savannah Presbytery or Presbyterian Church of the United States through financial contributions or otherwise secured title in any manner, whatsoever, either partially or in whole, to any real property or any buildings of any kind constructed on any real property now or formerly in possession of Mary Elizabeth Blue Hull Memorial Presbyterian Church." Your answer to number 6: "Records do not reveal that such title was ever held by the Savannah Presbytery and the Presbyterian Church in the United States." Number 7—and we're about through. List all instances where the Savannah Presbytery and the Presbyterian Church of the United States through financial contributions or otherwise participated in whole or in part to the cost, including, but not limited to architect's fee, survey fees, . . . fees, or any other costs involved in the purchase of real property and construction of buildings thereon." Your answer to number 7, sir, "Records do not reveal that any such contributions were made." Now, one other [357] question I have to ask you, and I'll let you go.

Mr. Pratt: What is your question now? Maybe I can answer it.

Mr. Cowan: I'm going to ask it now. Interrogatory number 19, Mr. Pratt. "Is it the defendant's contention that the fact that these churches are not affiliated with the Savannah Presbytery or the Presbyterian Church in the United States, mean they are not recognized as a church of the Presbyterian denomination?" Now, what is your answer to that?

Mr. Pratt: Well, now, you've read a lot of questions there. Are you—

The Court: You want the answer to the last question?

Mr. Cowan: The last question.

Mr. Pratt: Now, I say, in all fairness, let's come back to the others.

Mr. Cowan: The others have to do with financial—

Mr. Pratt: I said the records did not indicate, and that doesn't mean that there might not be some record in Historical Foundation, but the records that I had access to did not indicate—

Mr. Cowan: Mr. Pratt, in the interrogatories I asked and these were propounded under oath, answered under oath, according to Georgia Code Section 38-1201, section, and this asked for information from the time that [358] this church was founded until the preesnt time and you were duty-bound in answering these under oath to give us the information we asked for and I think you gave it to us right here.

Mr. Pratt: I said the records did not show it.

Mr. Cheatham: (Inaudible)

Mr. Cowan: Number 19—do you want me to read it over?

Mr. Pratt: —

Mr. Cowan: 19. Is it the defendant's contention that the fact that these churches, Hull and Eastern Heights are not affiliated with the Savannah Presbytery or the Presbyterian Church in the United States mean they are not recognized as a church of the Presbyterian denomination.

Mr. Cheatham: Here he is asking for opinion evidence—

Mr. Cowan: I'm asking for—

Mr. Cheatham: Wait just a minute. Interrogatories . . . that can go far afield and what restrictions we have on us here in Court that—well, I object to that.

Mr. Cowan: Your Honor, he didn't object to the interrogatories. He answered the interrogatories. He has avail-

able all the—Book of Church Order, [359] all the laws of the church; he's the Stated Clerk of the Presbytery, the highest man next to the President of the Presbytery and he has this available information and he has answered it. Now, why is it—opinion—

The Court: I think . . . the last question, I think, calls for an opinion from this gentleman. He has got a perfect right to give his opinion to you in an interrogatory, but that doesn't make it admissible in evidence. The objection has been raised that that would call for an opinion and I am going to sustain the objection.

Mr. Cowan: You can come down.

* * *

Partial Testimony of Mr. J. Lehmon Brantley

[374] *Mr. Cheatham*: Then Read 4.

Mr. Brantley: 118-4. "Notice of Appeal or notice of Complaint, either by a party in the matter or by a member of the Commission, must be given within ten days from the date the Record is filed with the Clerk and must be given to both the Clerk of the court and to the Chairman of the Commission."

Mr. Cheatham: And has any Appeal been filed by any of these parties?

Mr. Brantley: No, sir.

Mr. Cheatham: All right, sir.

* * *

Partial Testimony of Dr. Ben Rose

* * *

[275] *Dr. Rose*: ". . . to the laws of the land. And you keep it until the laws of the land are changed to conform with what you believe is right. And if the law says you may not picket or gather peaceably for the purpose of pro-

test, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the conse— . . ."

* * *

[390] *Dr. Rose*: Your question again, please?

Mr. Page: You have stated that there is no provision in the Book of Church Order which provides that a local church can withdraw. I ask you if there is any provision in the Book of Church Order which says they cannot withdraw?

The Court: Not by implication.

Dr. Rose: There is no such provision; no, sir.

EXHIBITS

Portions of Minutes of the General Assembly of the Presbyterian Church in the United States for the Years 1839, 1867, 1875, 1951 and 1966

* * *

[425] § 184. *The Assembly will accede to an equitable division of funds.*

1839, p. 158. *Be it Resolved by the General Assembly of the Presbyterian Church in the United States of America,*

1. That this body considers itself and the Church at large bound, as both have been not only willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner.

2. That this is especially the case touching any claims which may exist on the part of the four Synods of Utica, Geneva, Genesee, and the Western Reserve, declared in 1837 to be no part of the Presbyterian Church, or on the part of those who seceded from the Church in 1838, or on the part of any body constituted out of the whole or any part of these elements. And that, in regard to all and each of these bodies and persons, the Assembly will faithfully adhere to any pledge or promise, express or implied, which it can justly be construed ever to have made, and will fulfil every expectation which it ever knowingly allowed to be cherished.

3. The Trustees of the Assembly are hereby authorized and requested to do, on the part of this Assembly, should occasion offer, whatever is lawful, competent, and equitable in the premises, conformable to the principles, and in the manner heretofore laid down in the Minutes of

this Assembly for 1837 and 1838, so far as relates to the corporate property of the Church, or any equities springing out of the same.

4. With reference to all Institutions, Corporations, Congregations, and other public persons or bodies in connection with us, but holding property for ecclesiastical purposes, or for religious and benevolent uses, which property is not subject to the control of the Assembly, although the said [426] persons, Institutions, or Congregations may be, in all such cases where difficulties relating to property have arisen or shall arise, in consequence of the long and painful disorders and divisions in our Church, we advise all our members and friends to act on the general principles heretofore laid down, and with the spirit of candour, forbearance, and equity which has dictated this Act.

5. The Assembly reiterates the declaration, that its chief desire, on all this part of our Church troubles, is to do even and ready justice to and between all persons and interests over which it has any control, or in regard to which it has any duty to perform.

* * *

[526]

MINUTES
OF THE
GENERAL ASSEMBLY
OF THE
PRESBYTERIAN CHURCH
IN THE
UNITED STATES,
WITH AN APPENDIX.
VOL. II.

A. D. 1867.

COLUMBIA, S. C.

PRINTED AT THE OFFICE OF THE SOUTHERN PRESBYTERIAN REVIEW.

1867.

PLAINTIFF'S EXHIBIT No. 16

(This is Front Cover: Entire booklet was admitted in evidence by stipulation)

[527] The report adopted by the Assembly is as follows:

The Committee to which was referred the Letter of the Synod of Kentucky, having given it a careful consideration, beg leave to submit the following report:

The letter contains a statement of the doctrines and principles for which this Synod and its Presbyteries have been contending for the last seven years, and lays this statement before the General Assembly as the basis of a covenant upon which this Synod may form an organic

union with us. It is, of course, not desired by this Synod that this paper should constitute any part of our doctrinal symbols or our written constitution, these being already established in such a form as the Assembly have, in other cases of union, either formed or proposed, distinctly declared its unwillingness to disturb. Nor is it desired, we presume, by the Synod, that the Assembly should enter into the controversies that have disturbed this body during the past seven years, or pronounce upon them in detail. The desire of the Synod, as we apprehend it, is the very natural and proper desire—to be assured that we are in such substantial agreement with them in the principles and doctrines for which they have been contending, that they will not be likely to have a recurrence of the difficulties from which they have already suffered so much. This agreement the Assembly can declare without any difficulty, since the whole existence of our Church as a separate organization has been an assertion of these principles, and a protest against those acts and doctrines that tend to subvert them. In the first official announcement, at Augusta, of our ecclesiastical existence, in the pastoral letter issued by the Assembly at Macon, and in the action of the last Assembly at Memphis, these great principles have been declared in the most solemn and emphatic manner, as among the fundamental principles of our ecclesiastical organization. And we have looked on the struggles of our brethren in Kentucky with a deeper sympathy and a livelier interest because we felt that they were contending substantially for the grand principles which have ever been the rallying cry of our Presbyterian ancestry in the best days of the Church's history—the supremacy of Christ's Crown and Covenant. And we are sure that should our brethren see fit to enter into organic relations with us, they will find that substantial agreement in all these great doctrines and principles which is necessary to a cordial and a happy

union. We therefore recommend the adoption of the following resolutions, viz.:

Resolved. 1. That this Assembly express its deep sympathy with our brethren in Kentucky in the troubles through which they have been passing during the last seven years, and its admiration of the firm stand which they have taken for the spiritual independence of the Church of Christ.

2. That this General Assembly declines now, as heretofore, to make any utterance concerning the acts of the body against which the Synod protests. Yet the Assembly feels free solemnly to assure the Synod of Kentucky not only of our cordial approval of, and sincere concurrence substantially in, the Synod's statement of doctrine and constitutional principles, as contained under the four heads of the third division of their letter, but of our sincere joy to find our brethren of Kentucky so ready to unite with us in solemn covenant, with a view, among other things, to the advancement and maintenance of these doctrines and principles as against the apparent Erastian tendencies of our American Protestantism.

3. This the Letter of the Synod of Kentucky be admitted to record, as they suggest, as a part of the historical acts and monuments of the Church, by publishing it in the Appendix to the Minutes of this Assembly.

4. That this Assembly cordially approves of the determination of the Synod of Kentucky, as expressed in the fourth resolution of its minutes of June 28th, 1867, communicated by its commissioners to this Assembly, to assert fully all its legal claims as a part of the "Presbyterian Church in the United States of America," and to reserve all its legal rights of property as a Synod in any union which may be formed with this body.

* * *

[669] II. CHURCH PROPERTY

BALTIMORE, *Jan. 11th*, 1875.

REV. SAMUEL J. NICOLLS, D. D., *Chairman:*

DEAR SIR: We now proceed to notice the second general cause preventing fraternal relations, namely: *The course pursued in regard to Church property.*

Most of the trouble in this matter is in the States of Missouri, Kentucky, and Tennessee, with individual cases elsewhere. The amount of property in dispute, or liable to it, has been estimated at not less than two millions of dollars. Some cases have been settled by arbitration. Other cases have been adjudicated in the civil courts, and the property adjudged sometimes to one side and sometimes to the other, not upon principles of equity, but upon legal technicalities. From the information received we are enabled to state that our people have, from the first, earnestly endeavored to settle the difficulty by compromise and arbitration, but in most instances it has been refused, and they have been harrassed with costly litigation, whereby have come increased heart-burnings and discussions, and no small reproach upon the Christian name.

This state of things cannot be contemplated with satisfaction by any who regard the peace of the Church, and "whatsoever things are lovely and of good report."

And now, without entering into a discussion concerning the decision of the Supreme Court of the United States, in the case of the Walnut Street Church, Louisville, Ky., or how far the action of the General Assembly (North) of 1872, in approving the principles there laid down, was inconsistent with the action of both the Old and New School Assemblies in approving precisely the opposite principle laid down by the courts of Pennsylvania, in the controversy

of 1837 and 1839 (see Church case in Baird's Digest), we here propose that this whole matter shall be submitted to arbitration on the principles presented in the paper adopted by the Old School Assembly of 1839, and of which, for convenient reference, as well as general information, a copy is here given, as follows (1839, p. 158):

Be it resolved, by the General Assembly of the Presbyterian Church in the United States of America:

[670] 1. That this body considers itself and the Church at large bound, as both have been not only willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner.

2. That this is especially the case touching any claims which may exist on the part of the four Synods of Utica, Geneva, Genesee, and the Western Reserve, declared in 1837 to be no part of the Presbyterian Church, or on the part of those who seceded from the Church in 1838, or on the part of any body constituted out of the whole or any part of these elements. And that, in regard to all and each of these bodies and persons, the Assembly will faithfully adhere to any pledge or promise, express or implied, which it can justly be construed ever to have made, and will fulfil every expectation which it ever knowingly allowed to be cherished.

3. The Trustees of the Assembly are hereby authorized and requested to do, on the part of this Assembly, should occasion offer, whatever is lawful, competent, and equitable in the premises, conformable to the principles, and in the manner heretofore laid down in the Minutes of this Assembly for 1837 and 1838, so far as relates to the corporate property of the Church, or any equities springing out of the same.

4. With reference to all Institutions, Corporations, Congregations, and other public persons or bodies in connection with us, but holding property for ecclesiastical purposes, or for religious and benevolent uses, which property is not subject to the control of the Assembly, although the said persons, Institutions, or Congregations may be, in all such cases where difficulties relating to property have arisen or shall arise, in consequence of the long and painful disorders and divisions in our Church, we advise all our members and friends to act on the general principles heretofore laid down, and with the spirit of candour, forbearance, and equity which has dictated this Act.

5. The Assembly reiterates the declaration, that its chief desire, in all this part of our Church troubles, is to do even and ready justice to and between all persons and interests over which it has any control, or in regard to which it has any duty to perform.—*Baird's Digest, p. 800.*

In accordance with the excellent Christian spirit of this paper, we propose that a plan shall be now arranged by which, so far as possible, all matters of church property that are in dispute, or that have not been adjudicated or otherwise settled satisfactorily to both parties, and all claims to property of any kind shall be settled by arbitration, upon principles of equity and fair dealing, as becometh Christians.

Should this proposal be such as you approve, we suggest that the details may be most satisfactorily arranged after an oral conference between the two committees.

By order of the Committee. Yours very truly,

WILLIAM BROWN.

* * *

[672] (1951) Each member of the committee was asked to make a study of the question and, if he desired, to submit a paper to the other members of the committee. Papers were submitted by five of the members of the committee.

The committee spent an entire day in discussion of that which was committed to it and the adoption of the report which is submitted, as follows:

That as a result of our study and deliberation, we submit to the General Assembly, the following five statements as our answer to the Assembly.

1. The legal title to property of a particular church is in its trustees on the behalf of that congregation. Therefore, the property is actually controlled by that congregation. This is recognized by the both Civil and Ecclesiastical courts. The right to hold and dispose of property is granted by the State.

2. A voluntary religious society which constitutes a religious organization or denomination, having established tribunals authorized to decide questions of faith, discipline, rule, or ecclesiastical government, is bound by decisions of such tribunals in such questions.

3. In such cases where a right of property asserted in a civil court is dependent solely on a question of doctrinal discipline, ecclesiastical law, rule, or church government and that question has been decided by the highest tribunal within the organization, the civil courts will ordinarily accept that decision.

4. Where property is acquired by a particular church, by purchase or otherwise, for the use of such church, it will be a matter for the civil courts to determine who constitute such church or its legitimate successors.

5. If trustees or members of a particular church undertake to withdraw and attempt to take their church property with them, it may subject all questions of ownership and control to a decision by the civil courts.

Respectfully submitted,

J. RUPERT MCGREGOR,
Chairman.

* * *

[724] (1966) 6. Declare itself (The U.S.A.) in favor of the phased withdrawal of all its troops and bases from the Vietnamese territory, if and when they can be replaced by adequate international peace-keeping forces, composed of military contingents capable of maintaining order while the peace settlement is being carried out.

7. Make available, through Congress, in fulfillment of the President's proposal, immediate reconstruction assistance and long-range economic development funds for South East Asia, including the several associated states of Indochina—this aid to be made available preferably through an effective international organization in which the beneficiary governments fully participate. In particular, the National Council of Churches requests that the United States Government take further appropriate actions through necessary Congressional and Executive measures to enable the United States to join the Asian Development Bank and to subscribe its full quota of capital.

In a world of revolution, rapid change and sharp conflict of ideologies, Christians have an opportunity and duty to be a reconciling and healing force between nations and peoples and races where possible.

The churches and voluntary agencies in the United States should prepare to expand greatly their services to

refugees and to those injured or affected by the war, and to play their full role in the gigantic task of reconstruction and reconciliation.

The General Board herewith endorses the following recommendations of the Division of Christian Life and Mission adopted October 8, 1965, for action by the National Council of Churches.

1. To continue and increase major, high-level dialogue between Asian and U.S. Christians in cooperation with the East Asia Christian Conference on the social, economic, and political questions affecting their respective countries.

2. To place in the crisis area of Asia a representative possessing political expertise as well as Christian understanding, to serve as a United States Christian presence in the area and to interpret Asian points of view to the churches in the United States of America.

3. To work directly and through the World Council of Churches on means for bringing about more meaningful and continuing relations with other churches across lines of political and cultural conflict. Looking to the future, the rebuilding of the Viet-Nam area calls for goals and programs big enough to enlist the support of all the people of Viet Nam. The task of reconciliation and the maintenance of peace calls for statesmanship of the highest order on the part of both churches and governments.

Respectfully submitted,

DR. FRANK B. DAVIS, *Chairman*

* * *

PORTIONS OF THE CHARGE OF THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

[698] I charge you further that regarding the congregational meetings of Eastern Heights and Hull Memorial on April 17th, 1966, it does not matter how many voted for or against the resolution of withdrawal. The fact that a majority or all members of one of the local churches may have voted to withdraw does not, of itself, give those members the right to take the church property with them. They must further show that the Presbyterian Church in the United States had previously abandoned its tenets and doctrines to the degree which I have previously charged you and only then will the majority vote of the local congregation to withdraw be valid.

[699] I charge you that when an individual becomes a member of a religious organization, his uniting with it is his voluntary act and he becomes bound by the rules and usages of the organization. A religious association usually adopts a constitution, by-laws and a form of government. A member, when he enters that organization, voluntarily assumes the duty of obeying the laws of the association. As to all matters fully ecclesiastical, he is bound by the decisions of the tribunal fixed by the organization to which he belongs as an arbiter to determine the disputed question relating to matters peculiarly within the province of the organization. In attempting to carry out the purpose for which the religious associations are formed, it becomes necessary in almost every instance, for the organization to hold and own property. The members of the organization, therefore, become interested in the property so owned. Differences may arise which bring about disputes as to what interest a member or a class of members of an organization may have in property. I charge you that Courts cannot become involved in questions pertaining to title or

right of possession of church property when that title or right of possession turns on ecclesiastical questions, such as the abandonment of doctrines and beliefs by the church organization. [700] Only when it can be shown that those in authority are attempting to carry the property along lines that are utterly variant from the purpose for which the organization was formed and that the governing authorities have substantially abandoned the tenets and doctrines of the original organization, can a Court have jurisdiction of ecclesiastical questions. As I stated, the burden is upon the plaintiffs in these cases to show that defendant, Presbyterian Church in the United States, which we will call the Southern Presbyterian Church, has attempted to carry the property of the plaintiff churches along lines that are utterly variant from the purpose for which the organization was formed, and that the governing authorities of the Southern Presbyterian Church has substantially abandoned the tenets and doctrines of the original organization.

I charge you further that if a religious organization has the power to change or amend its religious tenets and doctrines under its rules of procedure, then such amendments made within the rules of procedure cannot be questioned by civil courts or juries unless they amount to a substantial abandonment of the original tenets and doctrines so that the new tenets and doctrines are utterly variant from the purposes for which [701] the Church was founded.

I charge you that the Southern Presbyterian Church has the power to amend the Westminster Confession of Faith, which is a compilation of its tenets and doctrines under the rules of procedure. In the cases before you, as I have stated, the burden is upon the plaintiffs to show that the changes in the Westminster Confession of Faith were either not legally made, according to the Church's rules of procedure, or that the changes amount to a fundamental or substantial abandonment of the original tenets and doc-

trines of the Southern Presbyterian Church, so that the new tenets and doctrines are utterly variant from the purposes for which the Southern Presbyterian Church was founded.

* * *

[704] On the other hand, if you should find from the evidence in this case that the Presbyterian Church in the United States has violated its professed doctrine as outlined in the Confession of Faith and such violation amounts to a fundamental departure from the faith as it existed at the time of the original deeds the members of the respective plaintiffs could no longer accept and abide by the rulings and actions of the Presbyterian Church in the United States, and at the same time adhere to the Confession of Faith, then the plaintiffs upon leaving the denomination has the right to retain its own property.

If you find that the Presbyterian Church in the United States advocated and taught doctrines and teachings which are fundamental variations from the original doctrines, tenets, teachings of the Church, then you would be authorized to find in favor of the plaintiffs.

* * *

[705] I charge you further that both the local churches and the General Assembly must abide by the Confession of Faith understood at the time of its union. The congregations of the two local churches have a right to sever its connections with the Presbyterian Church in the United States if it so desires, without anyone's permission. In so doing, it cannot retain its property for the purpose of subjecting it to doctrines contrary to the Confession of Faith. If the Presbyterian Church in the United States substantially departs from the Confession of Faith, then the local churches not only have the right to withdraw but have the right to retain its property and to enjoin the defendant from interfering therewith.

* * *

[93] IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH
VS
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL

#5003

JUDGMENT

The jury impaneled to try the above styled cause of action having on December 1[illegible]h returned a verdict in behalf of the Plaintiffs and against the Defendants, a judgment is hereby rendered in behalf of the Plaintiffs and against the Defendants permanently enjoining and restraining said Defendants from trespassing upon the Plaintiffs' properties in any manner which would interfere with Plaintiffs' quiet and peaceful possession and use thereof.

This December 22, 1966.

/s/ Dunbar Harrison
Judge Superior Court, E.J.C.
of Georgia

[50] IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

EASTERN HEIGHTS PRESBYTERIAN CHURCH AND FRANK L. PERRY, SR., ET AL., AS TRUSTEES OF EASTERN HEIGHTS PRESBYTERIAN CHURCH

VS

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL

#5005

JUDGMENT

The jury impaneled to try the above styled cause of action having on December 15th returned a verdict in behalf of the Plaintiffs and against the Defendants, a judgment is hereby rendered in behalf of the Plaintiffs and against the Defendants permanently enjoining and restraining said Defendants from trespassing upon the Plaintiffs' properties in any manner which would interfere with Plaintiffs' quiet and peaceful possession and use thereof.

This December 22, 1966.

/s/ Dunbar Harrison
Judge Superior Court, E.J.C.
of Georgia

[733] In the Supreme Court of Georgia

JAN 18 1968

24366. PRESBYTERIAN CHURCH IN THE UNITED STATES et al. v. EASTERN HEIGHTS PRESBYTERIAN CHURCH,

24367. PRESBYTERIAN CHURCH IN THE UNITED STATES et al. v. MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,

1. Civil courts will, in a proper case, prevent diversion of church property from the doctrine or purpose to which it was originally devoted.

2. The degree of abandonment of, or departure from, original tenets of faith and practice by the general church which must be shown to afford such relief to the local churches is substantial, rather than complete or absolute.

3. The evidence presented an issue for the jury as to whether there was such a substantial abandonment or departure by the general church.

4. The above rulings are controlling adversely to the appellants upon all of their enumerations of error.

[734] GRICE, Justice. The issue here is whether two local Presbyterian churches, in withdrawing from the general organization, are entitled to the local church properties. It stems from claims by the local churches that the general church has abandoned the fundamental tenets of faith and practice existing when the local churches affiliated with it.

This litigation began on May 26, 1966, when Mary Elizabeth Blue Hull Memorial Presbyterian Church and Eastern Heights Presbyterian Church, incorporated non-

profit religious institutions located in Savannah, filed in the Superior Court of Chatham County petitions against the Presbyterian Church in the United States (herein referred to as "the general church") and the named chairman of the Administrative Commission of its Presbytery of Savannah. Each of the petitions sought injunctive relief against the general church organization interfering with the local churches' exclusive use and control of the local church properties. The defendants denied the material allegations of the petitions and sought affirmative equitable relief.

The two cases were tried together, resulting in verdicts and judgments in favor of the local churches.

The enumerations of error complain of the trial court's denial of motions to dismiss the petitions, for nonsuit and for directed [735] verdict, the admission of certain evidence, and also one portion of the charge to the jury.

The allegations of the petition of Eastern Heights and its trustees, insofar as necessary to recite here, are those which follow.

The congregation, on April 17, 1966, adopted a resolution, a copy of which was transmitted to the general church and its Savannah Presbytery. This resolution affirmed the congregation's religious faith and beliefs as originally adopted by the general church in 1861, declared that the general church had violated its constitution and departed from the faith and practice existing when Eastern Heights affiliated with it, and declared that Eastern Heights severed all connection with the general church and was henceforth an autonomous Presbyterian church. This resolution recited that the violations and departures of the general church from its original tenets of faith and practice included the following: ordaining of women as ministers and ruling elders, making pronouncements and recommenda-

tions concerning civil, economic, social and political matters, giving support to the removal of Bible reading and prayers by children in the public schools, adopting certain Sunday School literature and teaching neo-orthodoxy alien to the Confession of [736] Faith and Catechisms, as originally adopted by the general church, and causing all members to remain in the National Council of Churches of Christ and willingly accepting its leadership which advocated named practices, such as the subverting of parental authority, civil disobedience and intermeddling in civil affairs.

The petition alleged that the general church has also made pronouncements in matters involving international issues such as the Vietnam conflict and has disseminated publications denying the Holy Trinity and violating the moral and ethical standards of the faith.

It averred that all of the foregoing constitute a substantial, fundamental and radical departure from the faith and practice of the general church and have occurred since the affiliation of Eastern Heights with it in 1930.

The petition further recites that on May 19, 1966, an Administrative Commission of the general church's Presbytery of Savannah took certain action by a resolution which, in material part, recited as follows: The Presbytery had received letters from the named ministers of Eastern Heights and Hull Memorial in which each renounced the jurisdiction or authority over him of the general church and its Savannah Presbytery; that each had thus removed himself from office and membership in the general church and was no longer entitled to [737] perform with ordained authority any act in it; that by the resolutions of Eastern Heights and Hull Memorial of April 17, 1966, all elders of both churches, except one not contacted and another who dissented, had removed themselves from office and mem-

bership in the general church; that they no longer had any authority to exercise office derived from the general church; that since there was but one ruling elder in each of the two churches and one ruling elder does not constitute a Session so as to exercise jurisdiction over the two local churches, the Commission "will secure Ministerial leadership and provide regular services of worship in the sanctuaries of [the two churches] for those members who wish to continue their membership in and communion with [the general church], and will take such further action as shall be necessary in accordance with the Constitution of [the general church]."

The petition also averred that by such Administrative Commission action, the defendants threaten to trespass upon the property of Eastern Heights by assuming original jurisdiction over it, denying it the right to exercise authority over its affairs and imposing other ministerial leadership upon it for the purposes of holding regular worship services; that the removal of the regular minister and the imposition of another would disrupt the good order and peace [738] of its worship services; that the threatened acts of trespass would destroy the quiet and peaceful possession it now enjoys and would have a demoralizing effect upon it; that unless the threatened trespass is enjoined Eastern Heights will be irreparably damaged, the peaceful utility and enjoyment of its property will be adversely affected, and the dignity and sanctity of the church edifice will be intruded upon.

The plaintiffs declare that they are seeking to protect their faith and avoid one in conflict with that in existence when they affiliated with the general church, and that they should have title to the church property quieted and confirmed in them to preserve the trust. They allege that Eastern Heights is vested with title and ownership and now enjoys quiet and peaceful possession of described real property, conveyed to it or to trustees of it.

The prayers of the petition were for temporary and permanent injunction against the threatened acts of trespass hereinabove described and other relief.

The allegations of the petition of Hull Memorial are similar in substance to those of Eastern Heights. Those necessary to recite are as follows: that it owns described real estate, one portion of which was acquired in 1914 by deed reciting that it was to be used for a [739] place of worship by a church of the Presbyterian denomination known as the Mary Elizabeth Blue Hull Memorial Presbyterian Church; that it became affiliated with the general church in 1890; that no moneys have ever been contributed to it by the general church or by its Savannah Presbytery; that since it acquired its property the general church has made stated revoluntary, fundamental, unlawful, and radical diversion from the Presbyterian faith; and that in order to remain true to the Presbyterian doctrines and practices in force when it affiliated with the general church and acquired its property, it withdrew from the general church on April 17, 1966. The petition prayed for the same relief sought by Eastern Heights and in addition asked that title to the local church property be adjudged in it.

To each of these petitions the defendants interposed similar answers and cross bills which denied the material allegations. They made allegations which, insofar as necessary to relate here, follow. Prior to the adoption of their withdrawal resolutions the members and ruling elders of Eastern Heights and Hull Memorial were members of the general church, which is representative in form, and were subject to its constitution and laws. Because of such withdrawal by the two local churches the Administrative Commission took the action recounted in its resolution of May 19, 1966, referred to above. Its [740] decision was with full authority of the Savannah Presbytery, was made

known to the plaintiffs, but was not appealed from and therefore became final and binding on the parties and the court. The defendants have a right of possession to the properties but the plaintiffs have appropriated them to the use of the two local churches, in violation of law and the rules of the church. This constitutes a continuing trespass which must be enjoined or the defendants will be irreparably injured, and the peace and dignity of their right of possession of the properties for religious worship for those loyal to the general church will be impaired. Each answer and cross action prayed, among other matters, for injunctive relief against the local churches' appropriation of the local properties and for decree that the Savannah Presbytery of the general church has an implied trust over such properties as the rightful representative of the general church for the use and benefit of those members adhering to the doctrines and regulations of the general church.

Upon the trial the evidence took a broad range, both oral and documentary. The highlights of the history of the Presbyterian denomination were recited by theologians. They traced the beginning more than four hundred years ago, the spread of the movement to the American colonies in the eighteenth century, the establishment of [741] the Presbyterian Church in the United States of America, the withdrawal from it in 1861 by churches in the Southern portion of the United States, and the organization in Augusta, Georgia, of the defendant Presbyterian Church in the United States, sometimes referred to as "The Southern Presbyterian Church." They enumerated the bases of faith and practice of this organization when formed in 1861 as the Old and New Testaments of the Holy Bible, the Westminster Confession of Faith, and the Larger and Shorter Catechisms.

They stated that the constitution of the general church is composed of such Confession of Faith, the two Catechisms, the Book of Church Order, and the Directory of Worship. They explained that the government of the general church is representative or connective, and not congregational. They recited that the structure of this government, in ascending order, is as follows: the Session of each local church which is made up of its ruling elders; the Presbytery which is constituted of several Sessions in a geographical area; the Synod which is ordinarily composed of the Presbyteries within a state, and the General Assembly which is formed by representatives from the entire organization. They related that these Sessions, Presbyteries, Synods, and the General Assembly also constitute the judicial system of the church organization.

The evidence was that the constitution of the general church [742] contains no provision governing the situation here. There was considerable testimony as to whether the general church had over the years in various controversies recognized local ownership of church property. It was shown that the only provision in its constitution for a Presbytery to take local church property was when the congregation no longer existed.

Local witnesses recounted the origin and development of the two local churches.

Eastern Heights began as a mission of the Independent Presbyterian Church of Savannah. It was incorporated on December 6, 1930, and on the following day was commissioned by the Savannah Presbytery of the general church. At that time the Independent Church conveyed to Eastern Heights property to be used as a chapel, this deed naming as grantee "Eastern Heights Presbyterian Church, a religious corporation." Later two other tracts were acquired by it, each deed naming as grantees certain persons as

"Trustees of the Eastern Heights Presbyterian Church, and their successors in office." One of these deeds provided that the property was to be held in trust "for the use and benefit of the congregation of the Eastern Heights Presbyterian Church." At no time has the general church made any gift or loan to Eastern Heights.

[743] Hull Memorial was organized as an independent Presbyterian church and became affiliated with the general church in 1890. A portion of the property now in question was acquired in 1914; the deed named the Mary Elizabeth Blue Hull Memorial Presbyterian Church as grantee and recited that the property was to be used as and for a place of worship by a church of the Presbyterian denomination known as that named grantee. Later other property was acquired by it and these later deeds also named the Hull Memorial Church itself as grantee. Neither the general church nor its Savannah Presbytery has contributed any money to the purchase, buildings, operations, or maintenance of Hull Memorial.

Many documents were introduced in evidence. These included deeds, the withdrawal resolutions of the two local churches and the resolution showing the actions of the Administrative Commission above referred to.

Other documents pertained to the faith and practice of the general church when Eastern Heights and Hull Memorial affiliated with it and acquired the properties now in question. Many of these relate to actions which the two local churches cite as abandonment by the general church of its original tenets of faith and practice. These documents will be referred to later in this opinion.

[744] From the foregoing facts, we regard the controlling question to be this: Are local Presbyterian churches which withdrew from the general church, charging aban-

donment by the general church of the tenets of faith and practice existing when the local churches affiliated with it, entitled to maintain an action in the civil courts for the possession and use of the local church properties, legal title to which is in the local churches?

1. The appellants strongly urge that the petitions raise ecclesiastical questions which are exclusively within the jurisdiction of the church, not of the civil courts, and therefore that the plaintiffs cannot maintain this action.

In considering this contention we are mindful that "The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted, or censored by civil courts." *Sapp* v. *Callaway*, 208 Ga. 805, 810-811 (69 S.E.2d 734).

But, at the same time, we also keep in mind that when property rights are involved civil courts will, in a proper case, protect them against wrongful diversion. Our *Code*, § 22-408, provides: "Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but when property is devoted [745] to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust."

In this country the authorities are virtually unanimous in holding that because of the connective governmental structure of the Presbyterian Church, there is an implied trust upon the local church properties for the benefit of the general church. See in this connection, *Watson* v. *Jones*, 80 U. S. (13 Wall.) 679 (20 L.Ed. 666); *St. John's Presbytery* v. *Central Presbyterian Church of St. Petersburg*, (Fla.) 102 So.2d 714, 717; *Presbytery of the Everglades* v. *Morgan*, (Fla.) 125 So.2d 762. Furthermore, in

the trial of the present cases the court charged the jury that the local church properties in question were subject to an implied trust in favor of the general church, and no cross appeal was taken on this portion of the charge by the local churches. We take the view that such a trust is conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and that an abandonment of, or departure from, such tenets is a diversion from the trust, which the civil courts will prevent.

This court in *Mack* v. *Kime*, 129 Ga. 1 (2) (58 S.E. 184, 24 L.R.A. (N.S.) 675), held: "The general rule is that where property rights are involved, the civil courts will interfere to protect the members of an ecclesiastical organization who adhere to the tenets and doctrines which the [746] organization was organized to promulgate, and protect them in the right to use the property, as against those members of the organization who are attempting to divert the same to purposes utterly foreign . . ." See also, *Tucker* v. *Paulk*, 148 Ga. 228 (3) (96 S.E. 339), where this court approved the trial court's finding on whether the plaintiffs had "departed from the organization and doctrine of the church."

A different result is not required because of the rule that "Generally, the civil courts will look to the decisions of the constituted tribunals of a church in determining whether or not there may have been an abandonment of the faith, doctrines, practices, and decorum of a church." *Sapp* v. *Callaway*, 210 Ga. 277 (79 S.E.2d 532). Also, see *Mack* v. *Kime*, 129 Ga. 1, supra. Here, the Administrative Commission appointed by the Savannah Presbytery made no decision as to whether the general church had abandoned its original tenets of faith and practice. Furthermore, the local churches were not required to seek an ad-

judication of such issue within the framework of the general church because the diversions complained of had already occurred and the local churches had withdrawn and severed their connection with it.

The local churches charge abandonment of, or departure from, original tenets of faith and practice by the general church, and hence the civil courts will entertain the action.

[747] 2. Appellants contend that even if the civil courts will determine the question of abandonment of, or departure from, original tenets, the local churches must, under *Mack* v. *Kime*, 129 Ga. 1, supra, show absolute or complete abandonment in order to obtain relief.

The *Mack* case, in discussing the degree of abandonment or departure necessary to obtain protection, uses terminology such as "complete abandonment," "purposes utterly foreign," "entirely abandon," "utterly abandon," and "abandon altogether." We disagree. We do not believe that "complete" or like degree of abandonment or departure is necessary for relief. To the extent that *Mack* v. *Kime*, 129 Ga. 1, supra, requires such standard, it is expressly overruled.

The degree of abandonment or departure necessary to be shown to obtain protection in civil courts is that emphasized in the case at bar by the trial judge—substantial abandonment. "Substantial" is synonymous with "fundamental," "material," "vital," and "important," and is in keeping with the standard which is recognized in the following treatise statement: "No denomination, however, can exercise its share of control over a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the

local congregation united with the denomination. [748] The unlawful change of the constitution and confession of faith by the superior judicatory does not authorize a new use of its property by the individual church. In such case those who adhere to the original constitution and confession of faith are entitled to the use of the property." 76 CJS 849, Religious Societies, § 70. See also, 45 AmJur 771, Religious Societies, § 61; Annots., 24 L.R.A. (N.S.) 692, 8 A.L.R. 105, 70 A.L.R. 75.

To condition relief upon *complete* abandonment would impose upon the local churches the burden of showing that the general church had rejected each and every tenet of faith and practice existing when the local churches affiliated with it. For instance, suppose that this general church declared that it had abandoned as part of its tenets of faith and practice the entire New Testament. With that abandonment would go the existence of Jesus Christ, and the accounts of His birth, ministry, crucifixion, resurrection, and ascension into heaven. That would not be a "complete" abandonment of all the original tenets of faith and practice of that church. Yet even with the Old Testament, with all of its value, remaining, this would be an entirely different theology.

Therefore, we hold that upon a showing of substantial abandonment of, or departure from, the original tenets of faith and practice [749] by the general church, the civil courts will afford protection to the local churches as to possession and use of the local church properties, free of any claim by the general church.

It is significant that here the issue is between the local churches and the general church, not between two factions of a local church, as governed by *Code* § 22-406, which in material part provides that ". . . The withdrawal by one part of a congregation from the original body . . . is a re-

linquishment of all rights in the church abandoned." In this connection, we are familiar with some statements to the effect that the members of the local church who withdraw from the general church are not entitled to the property. See 45 AmJur 778, Religious Societies, § 68; 76 CJS 850, Religious Societies, § 71; *St. John's Presbytery* v. *Central Presbyterian Church of St. Petersburg*, (Fla.), 102 So.2d 714, supra, and citations. However, we know of no decision involving an issue between a local church and its general church, where a substantial abandonment of, or departure from, the original tenets of faith and practice by the general church is shown, which holds that in such situation the local church is not entitled to the use of its property. The cases relied upon by the appellants are thus distinguishable.

3. This brings us to the evidence and an evaluation of it in [750] the light of the requirement of *substantial* abandonment or departure.

The first of the actions cited by the two local churches is the declaration of the 1961 General Assembly of the general church that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to Reformed theology. This, the local churches contend, violates the Westminster Confession of Faith and the Larger and Shorter Catechisms in stated particulars.

Likewise claimed as departure from original tenets of faith and practice is the position taken by the General Assembly in 1965 in refusing to endorse a proposal by a Presbytery to seek constitutional permission for voluntary Bible reading and prayer in the public schools.

Another contended departure related to involvement, through the National Council of Churches for Christ, in the Mississippi Delta Project, a civil rights movement sponsored by several organizations.

Complaint is also made of the action taken by the 1963 General Assembly authorizing the ordination of women as ministers and ruling elders. This, the local churches claim, violates designated portions of the Scriptures and the Book of Church Order.

Several actions taken by this highest authority of the general church are urged to have been improper involvements in civil affairs, [751] constituting an abandonment of original faith and practice.

One of the involvements thus complained of was a 1966 pronouncement on the Vietnam conflict. This pronouncement approved the policy statement which the National Council of Churches for Christ had announced in 1965. That statement, after expressing sentiments upon the situation, concluded with the recommendation that the United States: "Continue to reaffirm and manifest its readiness for unconditional discussion and negotiation in such manner as will remove any uncertainty about official policy relating to the termination of military action. Such reaffirmation might be strategically expressed by the cessation of all bombing of North Vietnam for a sufficient period to create more favorable circumstances for negotiations to begin and with a simultaneous effort to induce the North Vietnam government to stop sending military personnel and material into South Vietnam."

Another involvement in civil affairs complained of was endorsement by the General Assembly of the civil rights movement.

One of the strongest objections by the two local churches is directed at the position of the general church on the subject of civil disobedience. Advocacy of this, insofar as the evidence shows, began in the spring of 1964.

[752] The material for Sunday School teachers in "The Earnest Worker" for that period included a presentation entitled "The Rightful Claims of Government." After stressing obligations to both government and God, it declared that "these are times when the civil authority (or church authority, for that matter) must be disobeyed . . ." and stated that whether or not peace and quiet should be maintained in a community where there is injustice is a matter for each person to decide with his own conscience and what he believes will be pleasing to God.

The Sunday School Quarterly for Older Youth, the approximate age group of 12 to 15, for May 24, 1964, contained a statement on civil disobedience, which is quoted here in full:

"Civil Disobedience. We are making history in our country and as Christians we should be awake to that fact. The problems created by segregation or integration are not new; they are as old as the human race. In our country the problem is not new, either, but in these past years we are all witnessing a new approach to that problem. For a century many have felt that the problem would solve itself as time went on; but we know now that hardly anything in human relations gets solved all by itself. About some sickness in the body, or a broken leg, we [753] rightly say: be patient and let nature take its course. But with human problems one can hardly say that; human nature is not dependable, and is quite as likely to go the wrong way as the right way. In fact, the Bible keeps on drumming away at the idea that it is more likely to go that wrong way than the right way. That is the first point we should make today: that good causes must be helped along, and we Christians must not walk away from them.

"During the centuries people have used various methods of trying to get their problems solved: revolution, insurrection, immigration, strikes, shutdowns, sit-ins, picket lines. Each of these has had varied success in achieving results that were looked for. The phrase *civil disobedience* is something Gandhi has brought into our English language, and he says he got the idea from Jesus and the Sermon on the Mount. Today's reference to Luke 20 is of importance here. Jesus tells his questioner to give to Caesar the things that are Caesar's, but to God the things that are God's. This not only means that I pay my legitimate taxes to Caesar, and go to church on Sunday and put something into the offering plate for God. It is not quite as simple as that. It may also mean that I *withhold* from Caesar what Caesar thinks is his, but what really belongs to God!

"The disciples ignored established customs when they walked [754] through the cornfields, plucked some corn and ate it; this was threshing in the judgment of the scribes, and was prohibited. Jesus violated the code of the Pharisees when He healed people on the Sabbath for the law at that time prohibited this. To help a sick man takes priority over the Sabbath laws; a moral law takes precedence over a civil law. You do not start a revolution; you do not bring in tanks and set machine guns up in front of the mayor's residence to shoot him when he comes out. You quietly make your protest known, persistently you make it known. When asked about it you give your morally justifiable reasons for doing what you do. You appeal to God and his righteousness rather than to the laws of the land. And you keep at it until the laws of the land are changed to conform to what you believe is right. And if the law says you may not picket or gather peaceably for purposes of protest, then you violate the law, appealing to a higher law to justify your actions. And, of course, you take the consequences.

"Taking the Consequences. There were some people in the early days of the church who were haled before the court because they would not sacrifice to the emperor. They believed emperor worship was idolatry, and that they could not affirm the Lordship of Christ and at the same time the [755] lordship of the emperor. Many Christians were martyred because of their stand in this matter. Peter says that they must not be surprised at that treatment, and they mustn't be ashamed of it. If they suffer because they have done wrong, that's what they can expect, and they shouldn't cry about it. But if they suffer for doing what was right and good, they must bear up under that too, and meanwhile commit their souls to a righteous Creator.

"This is true today when anyone feels it his or her duty to engage in some form of protest as a matter of conscience. If the paddy wagon comes and takes you off to jail you will have to bear up under that experience. If you had done wrong it would be an indignity; but if you have not done wrong, then it need not embarrass you. I do not think a Christian should go out of his way in order to get arrested, seeking martyrdom so he can talk about it."

In April 1965, the General Assembly, as shown by its minutes, went on record with a pronouncement entitled "Civil Disobedience: The Christian and the State." It is as follows:

"This brings us to the problem of civil disobedience: the open, non-violent and conscientious refusal to obey a law or laws, as a means of appeal to a higher law, combined with the willing acceptance of the penalty. It is an extreme demonstration of dissatisfaction with some aspect of society. It also presents in its [756] purest form the problem of the relation of the Christian to the state.

"Paul, and the Confession of Faith as well, affirm that governments are instituted by God and should therefore

be obeyed. However, the civil magistrates are also bound under their charge:

"'To protect the person and good name of all their people in such an effectual manner as that no persons be suffered, either upon pretense of religion or infidelity, to offer any indignity, violence, abuse or injury to any other person whatsoever.' (Westminster Confession, XXV, 3).

"It needs no elaboration that within the province of our church, we have often kept silent, though men, because of race, have suffered 'indignity, violence, abuse, and injury.'

"It is true that within our system of government, means are provided, through the law, to present and adjudicate grievances for such injustices. Yet, when due course of civil law is denied or abridged, the Christian, for whom 'God alone is Lord of Conscience,' may validly appeal to the Higher Law, led by the inner witness of the Holy Spirit, speaking in and through the scriptures. This great ordering Word may lead him against the world, against the establishment of the civil magistrates. But he should be very cautious about [757] taking such a lonely position and should hold it only in fear and trembling. If it leads him into civil disobedience, he should not try to justify his position before men. He has violated the law, the public standard of justice, and hence must recognize his liability to the judgment of the civil court.

"The church exists to unite men by God's grace with themselves, with God, and with their fellows—to make them whole. Therefore, it should give the support of Christian compassion to any member who, following his conscience in obedience to the Word, engages in civil disobedience.

"The methods of achieving justice which have been delineated here, while accomplishing in varying measures this end, cannot, in fact, bring to fruition our desire for unity in the bond of peace. Therefore, we as Christians are called upon to look beyond these methods to work toward the reconciliation of all parties involved by encouraging dialogue in the spirit of Christian love."

A year later the 1966 General Assembly, in answering a number of overtures seeking its action on the above declaration, acknowledged "the unrest and disturbance within parts of the church" as a result of the declaration. However, it reaffirmed that statement and attempted to clarify its "spirit and intent," concluding with [758] the following summation:

"The Presbyterian Church, U. S., desires at this time to reaffirm the obligation of all her obedient sons and daughters: (1) To live responsibly under the law of the land; (2) To use personal influence and ballot to enhance the rule of law so that injustice may be replaced with justice, and the full provisions of the law for justice, protection, and liberty may be enjoyed by every citizen of every community; (3) To regard civil disobedience as a measure of last resort to be employed only in circumstances of otherwise irremediable deed, and in the exercise of which the whole concept of law is not denied, but affirmed; and (4) To continue to support and regard with compassion those who practice civil disobedience when no legal recourse has been left open to them and who act in Christian conscience and allegiance to Almighty God."

These actions, positions and pronouncements by the general church, the local churches insist, violate fundamental faith and doctrines established long ago. They call attention to the Westminster Confession of Faith, which

provides "Synods and councils are to handle or conclude nothing but that which is ecclesiastical: and are not to intermeddle with civil affairs which concern the commonwealth unless by way of humble petition in cases extraordinary; or by way of [759] advice for satisfaction of conscience, if they be thereunto required by the civil magistrate," (Ch. XXXIII, par. 4), and "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience' sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him; from which ecclesiastical persons are not exempted . . ." (Ch. XXV, par 4). They also stress the applicability of certain provisions of the Book of Church Order, to wit: "The power which Christ has given his Church is wholly moral and spiritual, and constitutes the Church a kingdom and government distinct from the civil commonwealth . . ." (Ch. 1, § 1-2).

All these actions cannot be brushed aside as trivial and inconsequential. The General Assembly's declaration that foreordination was no longer necessary for Reformed theology was contrary to one of the basic tenets which has made Presbyterianism significantly different from other denominations. The General Assembly's endorsement of civil disobedience, which would allow a citizen to decide whether or not he will obey the law, is a radical venture into civil affairs. It is absolute defiance of law and order, and is the road to anarchy. [760] Also, the General Assembly's recommendations as to what steps should be taken to secure peace in Vietnam is an entry into diplomatic and military matters beyond the church's function as delineated by its Westminster Confession of Faith and Book of Church Order.

These matters constituted a course of conduct by the highest level of the general church's government for a period continuing into 1966 when the withdrawal resolutions were adopted by the local churches and the instant suits were filed. None of these departures existed when these two local churches affiliated with the general church.

As we appraise it, the foregoing evidence presented an issue for the jury to decide, whether the totality of actions of the general church amounted to a substantial abandonment of, or departure from, the original tenets of faith and practice by the general church. The jury found that they did.

4. The above rulings are controlling upon all of the enumerations of error made here.

(a) Under the rulings in Divisions 1 and 2, the trial court properly refused to grant appellants' oral motion to dismiss the petitions, asserting that the allegations concerning abandonment or departure from faith and doctrine are ecclesiastical questions exclusively within the jurisdiction of the church rather than the [761] civil courts, and even if the courts are allowed to determine such question the plaintiffs have not shown absolute abandonment.

(b) The admission of testimony concerning departure from faith and doctrine by two of the appellees' witnesses was proper in view of the ruling in Division 1.

(c) Denial of the appellants' motions for nonsuit, based upon the ground that the appellees' admissible evidence was insufficient to sustain their actions as pleaded, and for directed verdict, upon the ground that there was no conflict in the evidence and it was shown that all ecclesiastical questions involved rested exclusively with the church, was proper under the rulings made in Divisions 1 and 3.

(d) In view of the ruling in Division 2, the trial court properly charged the jury on "substantial", rather than "absolute," as the degree or standard of abandonment of faith and doctrine by the general church they must find in order to give relief to the appellees.

We find no error in the matters enumerated as error. The judgments are therefore

Affirmed. All the Justices concur.

[763] SUPREME COURT OF GEORGIA

Atlanta, January 18, 1968

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

Presbyterian Church in the United States et al. v. Eastern Heights Presbyterian Church.

This case came before this court upon an appeal from the Superior Court of Chatham County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

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[765] IN THE SUPREME COURT OF GEORGIA

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL. VS. EASTERN HEIGHTS PRESBYTERIAN CHURCH	Case Number 24366
PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL. VS. MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH	Case Number 24367

[766] **MOTION FOR REHEARING**

NOW COME, Appellants in the above stated case and within the time allowed by law move for a rehearing and reversal of the decision rendered by this Court on January 18, 1968. The decision of the Court herein was contrary to the contentions of Appellants, and they respectfully show to the Court that in rendering said decision the Court overlooked certain material facts in the record and certain decisions, statutes, and a provision of the Constitution of the United States of America, which are controlling as authority and which require a different judgment from that rendered; and further that the Court erroneously construed or misapplied certain provisions of law and certain controlling authorities hereinafter set forth.

PRELIMINARY STATEMENT

The decision of the Court reverses long standing case law in the State of Georgia which conformed with the First and Fourteenth Amendments to the Constitution of the United States as expressed in United States Supreme Court cases hereinafter cited. The Court's decision will have a disastrous effect on all Protestant churches in Georgia,

whether connectional such as the Presbyterian Church or congregational such as the Baptist Church. It will end the separation of Church and State, a cornerstone of American liberty.

If the Court's decision stands, any member of any Protestant church can create a jury issue out of any action of the Church in perfecting or explaining or acting upon its doctrine, simply by alleging that the action of the church [767] amounts to a substantial departure from what the church believed when he first became a member, and if the jury agrees with the disgruntled member of the church, the property can be delivered to his possession.

The effect of the decision is to destroy the free exercise of religion by religious bodies in Georgia and to impose the supervisory power of the Court on all actions of the Church that any member feels might constitute a substantial departure from the faith and doctrine of the church.

Appellants submit that not only is the Court's decision in error as to the law but that the practical application of its new standard of "substantial" deviation is incapable of definition that would be understood by a jury on a uniform basis. It reduces the question of what a church believes and whether or not it has substantially deviated from those beliefs, to the opinion of a jury of twelve citizens who at best are ill-prepared to decide the same.

When the judicial arm of the State, such as a jury, is allowed to decide such totally ecclesiastical matters, the separation between Church and State is destroyed. As Mr. Justice Black said in *Everson* v. *Board of Education*, 330 U.S. 1 (1947), at page 16:

> "Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the

words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State'." [Citation omitted].

[768] To allow the State, through its judiciary, to enter into church disputes is to violate the freedom of religion clause of the First Amendment (made applicable to the states by the Fourteenth Amendment) by taking from the church its constitutional right to decide purely ecclesiastical matters and giving that right to the courts. Surely no such result was intended by the framers of the First Amendment.

GROUNDS FOR REHEARING

1. The judgment of this Court which specifically overrules its older case of *Mack* v. *Kime*, 129 Ga. 1 (58 S.E. 184), which older case had adopted the interpretation by the Supreme Court of the United States of the First and Fourteenth Amendments to the Constitution of the United States as stated in *Watson* v. *Jones*, 80 U.S. 679, contravened the First and Fourteenth Amendments to the Constitution of the United States in that it denied to Appellants their right to free exercise of religion. Prior to this decision under the Georgia doctrine of stare decisis set forth in Ga. Code Section 6-1611, Appellants had a right to expect that the interpretation of the First Amendment to the Constitution of the United States by the Supreme Court of the United States would be applied by the Supreme Court of the State of Georgia in considering this case, as stated in *Watson* v. *Jones*, supra. By overruling *Mack* v. *Kime*, supra, this Court has denied Appellants the equal protection of the laws and the free exercise of religion guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States by refusing to apply to the

facts of this case the United States Supreme Court's interpretation of the First and Fourteenth Amendments of the Constitution.

[769] 2. The relief sought by the plaintiffs in the Court below would contravene the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679 and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that Appellees ask the State of Georgia, acting through its judiciary, to interfere with the free exercise of religion and deny the separation of Church and State, in that the Appellees ask the Superior Court of Chatham County, Georgia to prevent the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

The case of *Kreshik* v. *St. Nicholas Cathedral, supra*, involved a dispute between the Russian Mother Church and its American offspring over the right to use and occupy St. Nicholas Cathedral in New York City. The matter first reached the United States Supreme Court in *Kedroff* v. *St. Nicholas Cathedral of the Russian Orthodox Church of North America*, 344 U.S. 94.

It was clear that prior to the Bolshevik Revolution the Russian Orthodox Church was an hierarchial church with unquestioned paramount jurisdiction in the governing body in Russia over the American branch of the church. A New York State Legislature undertook to transfer the control of the New York churches of the Russian Orthodox religion from the Patriarch in Moscow to the governing authorities of the Russian Church in America. The United States Supreme Court struck down New York State's attempt to deliver possession of the Cathedral to the American branch of the church.

[770] After the case was reversed the New York Court of Appeals ordered a retrial of the question of the right of the American branch of the church to the use and occupancy of the cathedral on a common law issue. After the trial the New York Court of Appeals directed the entry of judgment against the Patriarch in Moscow holding that by reason of the domination—found by that Court to be the fact—of the Patriarch by the secular authority of U.S.S.R., his appointees could not under the common law of New York validly exercise the right to occupy the cathedral. The United States Supreme Court held that it made no difference that the State in the *Kreshik* case acted solely through its judicial branch, for whether legislative or judicial, it was still the application of State power and thus the judicial principles ruled on in the *Kedroff* dispute forbid the judiciary as well as the legislature of a state to interfere with the free exercise of religion.

In the *Kedroff* case Mr. Justice Reed, speaking of the New York law under consideration, said, beginning at page 119:

> "It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the State into the forbidden area of religious freedom contrary to the principles of the First Amendment . . .
>
> "Ours is a government which by the 'law of its being' allows no statute, State or national, that prohibits the free exercise [771] of religion. There are occasions when civil courts must draw lines between the responsibilities of Church and State for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law or ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion."

Although the Court in *Kedroff* was considering a state law, which is not involved in the present case, the *Kreshik* case made this reasoning equally applicable to judicial action. The result is that a state cannot, either through its legislative *or* judicial branches, decide purely ecclesiastical matters.

3. The judgment of the Superior Court of Chatham County contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679, and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that the State of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State in that the Court prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

4. The relief afforded Appellees by the Court below contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by [772] the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. 679, and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, in that the State of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State, in that the permanent injunction issued by the Superior Court of Chatham County, Georgia prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

5. The judgment of this Court which affirms the judgment of Chatham Superior Court contravenes the First and Fourteenth Amendments to the Constitution of the United States of America as interpreted by the Supreme Court in *Watson* v. *Jones*, 80 U.S. 190, in that the

State of Georgia, acting through its judiciary, has interfered with the free exercise of religion and denied the separation of Church and State and prevents the free functioning of the ecclesiastical government of the Presbyterian Church in the United States.

6. The Court erred in the first division of its Decision by holding that the actions of the General Church constituted a diversion of the church property from the doctrine or purpose to which it was originally devoted, for the following reasons:

(a) None of the actions of the General Church complained of by Appellees in any way affected or diverted the local church properties of Appellee churches. The actions of the General Church merely constituted an expression of the opinion of the General Assembly or the Commission of the church involved and were in no way binding upon local church members or the use of local church properties.

[773] For example, the Amendment allowing the election of women elders did not require the local churches to do so but only allowed them to elect women elders if a majority of the local congregations so desired.

(b) The Court erred in applying Georgia Code 22-408 (page 11 of the Decision) to the facts in this case because the facts do not in any instance show that the properties involved have been diverted by any action of the General Church. The said Code section is a direct outgrowth of *Bates* v. *Houston*, 66 Ga. 198, 202, which involved a congregational church and in which the property was being directly affected by the actions complained of.

If the activities of the General Church had been such that the use of the local church properties or the worship required in the local church properties had been substan-

tially changed then the reasoning advanced by the Court might be more tenable. But this is not the case. The local churches were not required to elect women elders, they were not required to change their beliefs on preordination, they were not required to buy the literature with which they were dissatisfied, and they certainly were not required to become involved in the civil rights activities of the church.

At no time were the local properties diverted from the trust.

(c) The Court erred in apparently attempting to distinguish *Sapp* v. *Calloway*, 210 Ga. 277 (79 S.E.2d 532), on page 13 of the Decision, by citing the part of the Sapp case which requires courts to adhere to the decisions of constituted tribunals within the church and then stating that the Administrative Commission appointed by the Savannah Presbytery made no decision on abandonment of tenets or faith.

[774] If the *Sapp* case is good law, and we believe it is excellent law as laid down by this Court in a full bench decision, then the actions of the General Assembly, being the highest tribunal within the church, are controlling upon the Court. Therefore, the activities of the General Assembly about which Appellees complain, are binding upon the civil courts provided that these actions were taken under the constituted by-laws and constitution of the General Church. There is no contention that these actions were outside the procedural laws of the church.

The *Sapp* case is actually at odds with the part of this Court's Decision which would allow a jury to consider ecclesiastical questions and although this Court overruled a portion of *Mack* v. *Kime*, supra, it has not overruled *Sapp* v. *Calloway*, supra, which remains controlling case law in Georgia.

That portion of *Sapp* v. *Calloway, et al.*, which states: "The Church acting through a majority of its members, settled this issue of doctrine and faith, viz., that a labor union was an oath bound secret society. Whether good or bad, true or false, neither the Court nor jury had a right to pass on the question of whether or not a labor union is an oath-bound secret society or not. Following the settled principles of law, the Courts of this State and of the United States, have consistently adhered to the sound and salutary rule that civil courts have no power or authority to interfere in the internal affairs of a religious organization concerning doctrines of faith or belief. *Stewart* v. *Jarriel*, 206 Ga. 855. The traditional American doctrine of freedom of religion and separation of Church and State carries with it freedom of the church from having its doctrines and beliefs defined, interpreted, or censored by civil courts" is contrary to the Decision in this case.

[775] (d) That portion of the Decision on page 13 which reads, "furthermore, the local churches were not required to seek an adjudication of such issue within the framework of the General Church because the diversions complained of had already occurred and the local churches had withdrawn and severed their connection with it." is an erroneous application of the general law and the laws of the Presbyterian Church because it would not require a person aggrieved of a decision of a lower judicatory within the church structure to appeal it to the higher judicatories prior to taking the matter to the civil courts. Until such time as it can be shown that the persons withdrawing from the General Church and appropriating the local properties, have exhausted their remedies within the church structure, they have no right to apply to the civil courts for redress. 76 C.J.S. Section 86, page 878. "It is generally held that a member, minister, or officer of a church aggrieved by a church decision or action must exhaust his

remedies within the church before he may resort to the courts for relief, but this rule is inapplicable where there is no higher church body from whom redress may be obtained."

Appellees did not attempt to have the General Assembly reverse its actions or activities by appealing either through the lower judicatories or directly to the General Assembly, but they took it upon themselves to pass judgment on the actions of the General Church and use this as their basis for withdrawal. The Court's decision now has the effect of destroying the appellate procedure within the church structure and allows a disgruntled person to take a grievance directly to the civil courts at any stage he desires.

[776] 7. The Court has erred in reversing that portion of *Mack* v. *Kime*, supra, which requires absolute abandonment before a civil court can become involved and in substituting "substantial abandonment", not only for the constitutional reasons hereinbefore cited in this motion but because the standard of "substantial abandonment" is incapable of a definition that can be understood on a uniform basis by any jury. What is substantial to one person may not be to another. It is also impossible for a person in determining whether or not an act is substantial to divorce from his mind his personal prejudices regarding the same.

This is probably one of the fundamental reasons why the Supreme Court of Georgia in *Mack* v. *Kime*, supra, and the Supreme Court of the United States in *Watson* v. *Jones*, 80 U.S. 679, have refused to allow the courts to intrude in religious affairs.

The effect of the new rule laid down by this Court is to make a jury question of any issue involving church doctrine or application of that doctrine and to require the jury to determine first what the church believes and

secondly whether there has been a substantial deviation from those beliefs. How is it possible for a jury of twelve persons to enter the often confusing quagmire of church doctrine, the vagueness of which probably brought the matter to Court in the first place, and exercise a judgment that would be superior to that of the church tribunals? There is no way, without destroying the doctrine of separation of Church and State in the process.

(e) The citation from 76 C.J.S. 849, on pages 14 and 15 of the Decision again emphasizes what has been argued previously in this motion. The citation refers to the situation where a local congregation is required to use the [777] local property for the propagation of doctrines in conflict with the fundamental teachings of the denomination. Without repeating the argument hereinbefore cited, the actions taken by the General Church of which Appellees complain, do not in any instance ". . . require the property . . ." (76 C.J.S. 849) to be used for the propagation of doctrines in conflict with what the local congregation feels are the fundamental teachings of the denomination.

For the above reason, it is respectfully submitted that the citation submitted from C.J.S. in support of the contentions in the Decision is not in point.

It should be emphasized here, that the complaints of Appellees do not involve changes of the constitution or amendments to the Confession of Faith except in the case of women elders. The actions complained of involved resolutions passed by the General Assembly and activities of certain commissions of the church.

(f) It is noted that on page 16 of the Court's Decision, that Code Section 22-406 is dismissed on the grounds that it only governs controversies between the two factions of a local church, although the Code Section is not limited

to local church disputes. If this is the case, then Code Section 22-408 which is relied on by the Court on page 11 of the Decision and which comes out of the same decision of this Court in *Bates* v. *Houston*, supra, should be dismissed as it too involves a dispute between two factions of a local church.

8. The Court has erroneously construed and misapplied the evidence beginning at the bottom of page 16 of the Decision as the evidence does not support the new criteria of "substantial abandonment or departure" for the following reasons:

[778] (a) The Court cites a resolution of the 1961 General Assembly on page 17 of the Decision by stating that the General Assembly declared ". . . that the doctrine of foreordination, as stated in the Confession of Faith, is not essential to the Reformed theology".

First, it should be noted that the declaration of the General Assembly did not in any way attempt to amend the portion of the Confession of Faith with which it was dealing but merely stated the opinion of a majority of those voting but merely stated that in their opinion it was not necessary for a member to believe that certain persons were preordained to Hell when they are born, in order to be a good Presbyterian.

There was nothing in this resolution that required any individual Presbyterian to believe it if he did not wish to do so. There was nothing in this resolution that amended the Confession of Faith as to predestination, (see Westminster Confession of Faith, paragraph three, pages 36 and 37).

Looking for a moment at the substance of the resolution, there is nothing in it that contravenes basic Christian theology for the basis of belief in Jesus Christ is that all

persons, no matter how evil they may be, can be saved if they will follow Christ.

(b) The same reasoning can be applied to the actions of the General Assembly regarding an amendment to the constitution permitting voluntary Bible reading and prayer in public schools, the National Council of Churches for Christ and their Mississippi Project, and certain statements made by the General Assembly, concerning Viet Nam and the civil rights movement.

[779] In each instance, the action of the General Assembly only amounted to an expression of that particular General Assembly and could just as easily have been amended or modified or rejected by a subsequent General Assembly. None of these actions affected the use of the local church property or required adherence by local churches.

As a matter of fact, the statements cited in the Decision, beginning on page 19, which are taken from Sunday School literature, do not even constitute actions of the General Assembly but are the free expressions of the authors of those works. Add to this the fact that Appellees admitted during the trial that they were not even using the literature of which they were complaining (T-180).

In summary, the alleged actions of the General Assembly constituted isolated instances in which opinions were expressed that were not binding upon the local congregations. The same is true of the literature of which Appellees complain.

When the vast array of doctrines and beliefs of the Presbyterian Church in the United States as set out in its Confession of Faith are compared with the complaints of Appellees, it is difficult to understand how it can be said that they are substantial either as to the doctrines complained about or the volume of complaints.

9. The Court has overlooked *Stewart* v. *Jarriel*, 206 Ga. 855, (2) as cited in the main Brief of Appellants, which case is a full bench decision and is controlling on the question of the intervention of a civil court into ecclesiastical matters.

[780] Although cited in the Brief, we will repeat here a brief excerpt from the Decision: "All questions relating to faith and practice of the church and of its members must belong to the church judicatories, to which the members have voluntarily subjected themselves since, when a person becomes a member of a church, he does so upon the condition of submission to its ecclesiastical jurisdiction and however much he may be dissatisfied with the exercise of that jurisdiction, he has no right to invoke the supervisory power of a civil court so long as none of his civil rights are involved. So long as a professed creed is not subversive to the peace and good order of society, it is not within the province of any department of government to settle differences in creeds or determine what ought or ought not be a fundamental of religious belief."

This case reinforces *Sapp* v. *Calloway*, supra, and makes clear beyond all doubt that Courts of law have no right to become involved in interpreting the doctrines of a church regardless of their reasons for doing so.

Not cited in the original Brief, because it was only handed down on December 7, 1967, and has not as yet reached the advance sheets, is *Northside Baptist Church, et al.* v. *W. Kenneth Goodson, et al.*, by the United States Court of Appeals for the Fifth Circuit as case number 24421. (Because the case is not yet generally available a xerox copy is attached to this Motion).

Of interest to the point involved in this case is the statement on page 7 of the Decision as follows: "State

and Federal courts alike are obliged to uphold the laws and rules of Church governing bodies against dissident factions. [781] *Watson* v. *Jones*, 1871, 80 U.S. (13 Wall.) 679. *Judicial tribunals, as arms of government of the government, must avoid interference* with established church policies and government." [Emphasis added] The Decision is well worth reading in its entirety.

CONCLUSION

As we understand the Court's Decision, it now makes a jury question out of any action of a church in amending its tenets or in expressing itself or taking action upon the same if a dissident member feels that such action by the church amounts to a substantial deviation from a doctrine or doctrines that existed when his local church joined the General Church.

In each instance, the jury would be required to find first what the church believed, second, whether or not the church has deviated from that belief, and, thirdly, whether or not there was a "substantial" deviation. In the process of these determinations the opinion of the jury would be completely substituted for that of the church. To allow this substitution is to violate the freedom of religion clause of the First Amendment to the United States Constitution (made applicable to the states by the Fourteenth Amendment).

The rationale that would allow a jury to become involved in such questions on the grounds of substantial deviation from doctrine, and the alleged benefits that would flow from such rights, is by far overshadowed by the destruction of the doctrine of separation of Church and State and the highly impractical procedure of allowing a jury to determine ecclesiastical matters. For these reasons and the more specific reasons [782] set out hereinbefore, we ear-

nestly and respectfully request this Court to review and reverse its Decision, to reinstate the principles of *Watson* v. *Jones* which are expressed through *Mack* v. *Kime*, *Sapp* v. *Calloway*, and *Stewart* v. *Jarriel*.

The preservation of the connectional system of Protestant churches in Georgia is dependent upon this reversal.

Respectfully submitted,

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[762] SUPREME COURT OF GEORGIA

Presbyterian Church in the United States et al. v. Eastern Heights Presbyterian Church.

Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church.

ON MOTION FOR REHEARING

We have carefully considered all of the contentions made by the appellants and have found them not meritorious. As to the contention that this was a matter for ecclesiastical, not civil, courts, it should be pointed out that the appellants in their answer and cross action filed in each case, specifically prayed for affirmative relief as to the property in question, thereby themselves invoking rulings by the civil court as to the matters now complained of.

The motion for rehearing is without merit, and is denied.

[791] SUPREME COURT OF GEORGIA

Atlanta, February 12, 1968

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Presbyterian Church in the United States et al. v. Eastern Heights Presbyterian Church.

Presbyterian Church in the United States et al. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church.

Upon consideration of the motion for a rehearing filed in these cases, it is ordered that it be hereby denied.